



UNIVERSITY OF CAPE TOWN
IYUNIVESITHI YASEKAPA • UNIVERSITEIT VAN KAAPSTAD

GEOMATICS



Faculty of Engineering & Built Environment

Assessing customary land administration systems for peri-urban land in Ghana

by

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Thesis Presented for the Degree of

DOCTOR OF PHILOSOPHY

March 2013

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ABSTRACT

Customary tenure is the predominant land tenure system in Ghana. It has been practiced for many years. Customary land tenure is built on the foundations of an African concept of land, distinguished by centrality of community, spirituality, and mutual dependence of the individual and the community. Colonization, increased population, rapid urbanisation has placed enormous pressure on customary tenure, especially in peri-urban areas. This study investigates customary administration in peri-urban Ghana. Using critical realism and multimethodology, peri-urban customary tenure in Accra and Kumasi, the fastest growing cities in Ghana, are assessed. A model for assessing functionality for peri-urban customary systems has been developed. The results indicate that functional customary systems adhere to the principles of good governance in customary land administration, although a lot needs to be done to improve accountability, transparency and land rights of women. It was also observed that whether the system has patrilineal or matrilineal inheritance does not have any significant influence on functionality. Further research is recommended to investigate best practices from other tenure systems to improve peri-urban customary tenure without compromising good aspects of customary systems.

ACKNOWLEDGEMENT

I am indebted to Associate Professor Jennifer Whittal. Her cooperation, direction and motivation have made the study possible. Her devotion to duty, encouragement and financial assistance has brought me to the completion of this thesis.

My sincere thanks go to Dr. Clarissa Augustinus, my supervisor during my MSc, who introduced me to Associate Professor Jennifer Whittal, for her continued interest in my academic development. To Professor Kassim Kasanga of the Department of Land Economy of KNUST, I say thank you for encouraging me all the way through this studies.

I am grateful to the traditional leaders and people of the case study areas, for their time and readiness to provide data. My thanks go to all informants for their input into this work. I would like to acknowledge the invaluable assistance given by other members of staff at UCT and my colleagues at KNUST. I thank Ms. Soraya Shaffie and Ms. Jacinta Edusei for their valuable assistance.

African Centre for Cities (ACC) partially financed my study. I am particularly grateful for the PhD Seminars and workshops. It was an avenue for fruitful interaction. I take this opportunity to say thank you to Mamphaka, Cleotilda, Williams, Kitty and others of the Land Tenure and Cadastral Research Group, Division of Geomatics Engineering, UCT, for their support in various ways.

My heartfelt thanks go to my wife, Olivia and children, Yaw, Joana, Kwasi and Gladys whose prayers, sacrifices, encouragement and love kept me going during these years of temporary separation. Olivia, thank you for proving that what men can do women can do better. To members of my extended family, I say thank you for your prayers and for keeping the family together.

Finally, to God, my Maker, Provider and Sustainer, I say thank you, for your faithfulness.

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GLOSSARY

Allocation Note (AN): A written note issued by landowners describing the purpose and conditions pertaining to customary transfer of land.

CLS: Customary land secretariat: These are offices set up by government in some customary areas to assist in the administration of land. The registrar is appointed and paid by Government.

Destoolment: Removal of a traditional leader from office

Dysfunctional (case study area): An area where customary law has broken down. It is characterized by land delivery problems such as prevalent litigation, landlessness, stalled development, presence of 'land guards', lack of transparency.

Functional (case study area): A customary area where land transactions work according to customary law and practice.

Hene: Akan title for chief or king

Land-guards: Armed personnel hired to protect a piece of land in times of land conflicts

Mantse: Ga title for chief, king or traditional leader

Nana: Akan title for a grandparent, chief or king

Nene: Dangmbe title for chief or king

OASL: Office of the administrator of stool lands

Omanhene: Akan title for paramount Chief

Pers. comm.: Personal communication

PESTLE: Acronym for Political, Economic, Social, Technological, Legal and Environmental

Sold/ Sale/ purchase: The word ‘sale’ is used loosely here to mean ‘lease’. Outright sale of land is unconstitutional in Ghana (Constitution of Ghana, 1992). Land can only be leased even though ‘sale’ and ‘purchase’ are used in everyday conversation.

SSM: Soft system methodologies

Stool (Skin): A body of persons having control of land as representative of the particular community.

Stool land: Any land or interest in or over any land controlled by a stool/skin or the head of the particular community including a family as known to customary law, for the benefit of the subjects of that stool/skin/family or members of that community.

Stranger: A non-subject of a stool. The stranger may belong to the same language and cultural group as the stool lineage and other citizens of the community by birthright: the difference is that the stranger has no citizenship by right of matrilineal/patrilineal descent as a subject of the stool on whose land he/she wishes to settle.

TCPD: Town and Country Planning Department

CHAPTER 1 INTRODUCTION

1.1 Background

With rapid urbanization, competition is increasing in most developing nations to secure land for housing and other infrastructural development. The inability of most Sub-Saharan African countries to provide basic shelter and employment for the growing urban population has resulted in the urban poor fending for themselves at urban peripheries and other open spaces in urban centres. This puts pressure on land and other services, and leads to a variety of tenure arrangements. The inability to cater for the growing urban population is related to colonial land administration promoting alien urban land holding tenure such as leasehold and freehold, rather than improving indigenous systems. In addition, most countries in the sub region lack human and/or material resources for the provision of such alien tenures. Formal systems of managing such tenures are still expensive, time consuming and ineffective due to bureaucracy, corruption and lack of transparency (Akrofi, 2006). This research does not discuss the merits or demerits of formal land delivery systems as opposed to customary systems. It rather seeks ways of improving customary systems, which are the main source of peri-urban land administration in Ghana.

Customary tenure had been practiced since time immemorial in the sub region before the arrival of the colonialists. It is therefore not surprising that despite centuries of indirect and formal imposition of other forms of tenure, most communities remain predominantly traditional, exhibiting customary features, albeit with some modification (Payne 1997, Durand-Lesserve, 2006).

About 80% of land in Ghana is communally owned. The highest interest in land is the allodial title which is vested in a stool or skin with traditional authorities (chief and elders) as custodians. Article 267 (1) of the 1992 Constitution of Ghana reads “All stool land in Ghana shall vest in the appropriate stool on behalf of, and in trust for the subjects of the stool in accordance with customary law and usage.” Groups and individuals who are members of the stool or skin have customary freehold. Customary freeholders have secure tenure as not even the allodial community are supposed to alienate or dispose of their interests without the consent of the

customary freeholder (Da Rocha and Lodoh, 1999). Historically, customary land law offered the best security of tenure to individuals, families and local communities. Although there were no formal records, customary conveyance was performed publically within the local community, and community witness was enough of a 'record' for land transactions. There was no need for surveying and registration and so customary land acquisition was fast and inexpensive. Customary tenure regimes were often built on transparency, social security, negotiation and consensus building, all in the interest of the community. The stability of customary tenure has been disturbed by rapid urbanisation and its resultant high demands on urban land and pursuit of wealth by some traditional leaders.

As in most developing countries, urbanisation is characterised by high demand for land especially in peri-urban areas. This can result in tenure insecurity, landlessness, and land conflicts (Ubink, 2007; Ubink, 2008; Kasanga, 2008). Other problems associated with customary tenure combined with rapid urbanisation in Ghana are:

- Dispossession of the land rights of the indigenous poor and disadvantaged groups (women and strangers):- Some traditional leaders/family heads or ordinary members of the family sometimes sell land without the prior knowledge of other family members who have interest in that same land.
- Multiple sales of land: - Some traditional leaders/family heads can sell the same piece of land to several people, sometimes claiming they are not aware that the same parcel had been sold already.
- Change of traditional leader: - When there is a new traditional leader as a result of death or destoolment (removal of a traditional leader from office), the new leader, in a bid to raise some money, especially when there is no more land to sell, is sometimes known to disclaim knowledge of agreements and transactions between the strangers in occupation and the former leader. Usually, the strangers are then compelled to renegotiate for the land they are using.
- Boundary disputes: - In the past, boundary disputes were uncommon in customary tenure, since neighbours belonged to the same family. However, increasing land value and sale of land to strangers have raised

many boundary disputes both within one traditional area and between different traditional areas.

- Change of land use from agricultural to urban uses.
- Indiscriminate and haphazard siting of building projects in disregard of statutory planning schemes: - Some traditional leaders/family heads do not consult the Town and Country Planning Department before they sell their land. To maximise profit, every piece of land is sold without making provision for social amenities, public places or land for development infrastructure.

Despite all these shortcomings, customary tenure remains an important land administration system for peri-urban Ghana. This is due to the fact that the Ghanaian government does not own land and therefore cannot supply land for urban development. Also, customary land delivery and administration is more affordable to the urban poor than formal land delivery. Payne (2000) posits that the form of tenure under which land rights are held has an effect on its market value and properties without clear titles are thus more affordable to the urban poor. He therefore argues against the provision of freehold and other individual titles especially in developing nations, because these titles inflate the land market and create an economic barrier to land access. Strengthening customary land delivery and administration systems is important for the peri-urban poor.

1.1.1 Urbanisation and customary tenure

Prior to the advent of colonization and the establishment of modern African states, pre-colonial political entities were mostly families, clans, chiefdoms and kingdoms. These employed indigenous ways of accessing and managing land (Okoth-Ogendo, 2008). Land was then plentiful and had virtually no commercial value. Social cohesion was preferred over economic gain. Customary tenure was efficient and delivered secure tenure for landholders. However, urbanization and commercialization of land have adversely affected the ability of customary tenure to deliver as it did in the past.

It has been observed that in many cities in the developing world, urban land can either be obtained formally or customarily, and that the customary sector provides

much more land to land seekers (including majority of the poor) than the formal sector (Kironde, 1995). Most often the customary sector is considered informal and usually ignored by governments, planners, service providers and others, because it is barely understood or documented (Kironde, 1995; Payne 1997; Durand-Lesserve, 2006).

Pieterse (2009) asserts that between 1990 and 2000 the urban growth rate for Africa was 4.53% while overall informal urban development (slums) grew by 4.58% (for the same period), thus almost all urban growth was in the form of slums. A major factor causing slums is the lack of secure tenure resulting from illegal subdivision of agricultural land and construction of dwellings in contravention of land and planning laws. Although customary tenure, as it is practiced now, delivers land for urban development, in most cases, it is not done in conformity with land and planning legislations and thus slums develop even in customary areas.

African urban growth has a major impact on peri-urban land, resulting in great profit through land sales for those who can lay claim to those lands (Ubink, 2007). In West Africa, only 2% of land has any documentation (Toulmin, 2006): land rights are held in customary tenure. Meanwhile, governments provide little or no legal protection to customary areas, under the pretence that they do not want to interfere with chieftaincy affairs (Ubink, 2007). The result is litigation that worsens the plight of the urban poor. Strengthening local customary institutions of land administration to deliver adequate land efficiently is in the interest of peri-urban and urban populations and government land management.

1.1.2 Systems thinking and analysis

Cadastral systems involve a wide range of subsystems, all of which are vital for the efficient running of the system as a whole (Fourie and van Gysen, 1995; Barry and Fourie, 2002; Zevenbergen, 2002). There may be a variety of legal institutional and technical frameworks – formal and informal - affecting the same parcels of land especially in sub Saharan Africa (Toulmin, 2006; Ubink, 2007; Kasanga, 2008). This complexity is exacerbated by rapid urbanization (Toulmin, 2006; Ubink, 2007; Kasanga, 2008). Any attempt to tackle a problem at the subsystem level, without considering the entire system, proves futile (Fourie and van Gysen, 1995; Payne,

1997; Barry and Fourie, 2002; Zevenbergen, 2002; Kasanga, 2008; Payne *et al.*, 2009). There is a growing consensus of the need for systematic and holistic research in cadastral systems rather than disaggregated research on the subsystems (Fourie and van Gysen, 1995; Barry and Fourie, 2002; Zevenbergen, 2002).

Fourie and van Gysen (1995) argue that when a holistic approach is adopted, the various subsystems, their interdependence and how they are connected, can be analysed to obtain an overall picture of the cadastre. Integrated management of property interests can provide better land information for policy makers and result in better land use decisions (Fourie and van Gysen, 1995; Barry and Fourie, 2002;). Barry and Fourie (2002) assert that holistic approaches incorporating all subsystems accommodate complex situations including human behaviour and non-static cadastral systems. These also widen the scope of analysis and evaluation by including the external environment in which the system operates and the analyst can conceptualise the situation from different worldviews. Systems thinking, underscored by critical realism (Whittal, 2008), is ideally placed to analyse customary tenure systems holistically, taking cognizance of the technical, social and environmental factors that impact on its proper functioning.

1.1.3 Case study research

Case studies are rich, empirical descriptions of particular instances of a phenomenon that are typically based on a variety of data sources (Eisenhardt, 1989; Yin, 2003). Cases can be historical, but most often they are contemporary descriptions of recent events or occurrences in their real world context. Eisenhardt and Grasbner (2007) assert that the popularity and relevance of case studies is that it is one of the best bridges from rich qualitative evidence to mainstream deductive research.

Case study methodology is proposed as useful for cadastral reform research (Williamson and Fourie, 1998). In a review of 'current' worldwide methodologies needed for cadastral development, Silva and Stubkjaer (2002) reviewed nine publications and found that five of them were based on case studies. The reason being that the "cadastre relates as much to people and institutions, as it relates to land, and that cadastral systems are shaped by social, political and economic conditions, as by technology" (Silva and Stubkjaer, 2002: 403). Cagdas and Stubjaer

(2009) reviewed ten doctoral theses on cadastral development between the years 2002 and 2006 and found that all the researchers made use of case studies. Case study is a rigorous research method (Williamson and Fourie, 1998) that provides a good understanding of existing cadastral systems and enhances the capacity to adapt reforms to local conditions.

Chitekwe-Biti (2009) used case studies to demonstrate how the Zimbabwe Homeless People's Federation and its partner, Dialogue on Shelter, address struggles of the urban poor in the face of continued economic and political crisis. They examine how new solutions for housing and livelihood strategies are created in the face of rapid socio-economic change and political turmoil. Case study methodology has also been used to research access to land by the urban poor in various countries such as Uganda – Nayenga (2003), Bangladesh – Rahman and Manprasert (2006), Thailand – Boonyabancha (2009), Indonesia – Some *et al.*, (2009), Philippines – Teodoro and Co (2009), and Argentina – Almansi (2009).

Yin (2003) identifies six methods of data collection often used in case study research. They are (1) documentation, (2) archival records, (3) interviews, (4) direct observation, (5) participant observation, and (6) physical artefacts. In this research documentation, interviews, direct observation and focussed group discussions are used to investigate functional and dysfunctional customary urban land delivery systems in Kumasi and Accra.

1.2 Research Purpose

Fourie (1993) notes that, in African urban areas, land tenure systems are not static but adapt to urbanisation. Ubink (2007) observes that urbanisation has led to rising demand mainly for residential land at the urban periphery. Consequently, chiefs lease customary land to strangers (a non-subject of a stool or skin) for high rentals resulting in tenure insecurity for community members. This is confirmed by Kasanga (2008) who observed increased pressure on urban land in Ghana, resulting in landlessness and homelessness by customary freeholders. This phenomenon was hitherto unknown in customary tenure.

Literature shows a tendency towards choosing group tenure for the urban poor (Augustinus and Benschop, 2003; Payne *et al*, 2009). Durand-Lasserve (2006) noted that customary land management practices have a surprising capacity to adapt to new economic and social conditions and rapid urbanisation. He observed the re-emergence of customary claims in most West African countries, where customary law and practice had been officially abolished, because of the failure of formal land delivery. Customary land delivery in urban areas is 'neo customary' (*ibid*), in that; it is replaced by a combination of re-interpreted customary practices, both formal and informal.

Freehold and leasehold titling are often expensive and do not necessarily provide tenure security, protect people from eviction, or improve infrastructure and service provision (Durand- Lasserve, 2006; Toulmin, 2006; Barnes and Griffith-Charles, 2007; Payne *et al*, 2009). Satterthwaite (2009) suggested representative organizations as the best route to improve urban land and housing for the urban poor. Since the majority of the urban population in Ghana are poor, and customary tenure is deeply entrenched in all urban areas, it will continue to be a major source of urban land delivery. Customary urban land delivery is likely to ensure social cohesion under conditions of rapid social change, provided the bottlenecks in the current system are addressed.

This research adds to the body of knowledge by seeking ways of strengthening customary systems to meet the urgent need of peri-urban land delivery and administration in an efficient manner. The results of the study may inform those interested in urban customary tenure in Ghana.

1.3 Aims of the study

The aim of this research is to understand the processes of land administration, development and access in peri-urban areas in Ghana. These customary land tenure areas were formerly rural with predominantly homogeneous communities. Acquisition of land and means of holding land by the recently urbanized population are investigated along with the structures and processes of customary land administration.

1.3.1 Objectives:

1. To critically examine the strengths and weaknesses of current land delivery and administration in customary peri-urban areas in Ghana.
2. To investigate aspects of functional (customary land delivery) systems which appear to contribute to functionality, and aspects of dysfunctional systems which appear to contribute to their dysfunctionality.
3. To assess whether the aspects identified in objective 2 are particular to matriarchal or patriarchal systems of land administration and holding, or whether they are general to both systems.

1.4 Research Questions

1.4.1 Primary research questions:

1. Why is customary tenure breaking down in the face of rapid urbanization in some areas and not in others? (Institutions, power, politics, customary practices, processes, disconnection between authorities – tribal and formal government etc.)
2. What are the indicators/symptoms of functional systems compared to dysfunctional systems?
3. What determines (causes) whether certain systems are functional or not?
4. Are aspects, which contribute to functionality/dysfunctionality, related to either matriarchal or patriarchal customary structures?

1.4.2 Embedded research questions:

The under-listed questions should be answered first in order to answer the primary research questions.

5. What theoretical framework is appropriate for investigating access to land and customary land administration systems in peri-urban Ghana?
6. What approaches are available, which have been used and to what effect, in cases of modelling and analysing land access and administration in Ghana, Africa and elsewhere, particularly for customary areas?

7. Is a systems approach to modelling and analysis suitable to address the research questions? Has it been undertaken before in Ghana or other similar countries?
8. What systems tools are available and suitable to model and analyse land access and administration? What have been used before? How were they used and to what effect? Which other systems tools may be useful?

1.5 Theoretical framework

Positivism, interpretivism, critical realism and other philosophical approaches used in knowledge creation (Denzin and Lincoln, 1998; Probert, 2004; Mingers, 2006; Whittal, 2008) are investigated and critiqued to select appropriate philosophy to research into real world complex peri-urban customary land access and administration (see 4.4). A suitable systems approach to the selected philosophical approach is also investigated (see 2.5.2 and 0). The theoretical framework is complemented by a fundamental cognitive presupposition about land, the ‘African worldview’ that is vital for research in peri-urban customary land (see 4.3).

1.6 Research Methodology

A mixed methodological approach is adopted for this study. Different systems methodologies are examined and critiqued to identify suitable approaches suitable for research into peri-urban customary land access and administration. Multiple case studies are used to provide rich description and identify substantive issues.

1.6.1 Sampling

Theoretical sampling was used in selecting case study areas. The selection was based on either prevalence of court cases, expert advice or presence of “land-guards” (land-guards are people who are hired by ‘landowners’ to safeguard land – although this is against the laws of Ghana, the practice persists). The case study areas comprised functional and dysfunctional peri-urban areas in Kumasi and Accra (see 5.2.3). In Ghana, although all regions are undergoing rapid urbanisation, the Greater Accra and Ashanti regions are the most affected (Kasanga, 2008; Ghana Statistical Service, 2012), due to the level of commercial and industrial development and educational institutions in these areas. Accra and Kumasi are therefore used as case study areas for this study (see Table 1-1) since they have fast developing peri-urban

communities. A settlement with a population of more than five thousand is considered urban in Ghana (Berry, 2009b).

Functional cases are areas that customary tenure is working well despite the increasing pressure of land. Such areas have transparent rules and regulations concerning how to access land; they are relatively free of land litigation cases in the formal courts, and land-guards. On the other hand dysfunctional areas are the direct opposite. They are areas characterised by land litigations, presence of land guards; landlessness; uncompleted buildings and others. Case study areas were selected such that an area falls under the jurisdiction of a particular traditional leader. This is because the leadership style of the traditional leader influences land delivery. Three functional and three dysfunctional cases were chosen in Accra and Kumasi as shown in **Error! Reference source not found..**

Table 1-1: Functional and dysfunctional case study areas

KUMASI (Matrilineal)	ACCRA (Patrilineal)
Appeadu	Ogbojo
Asokore Mampong	Teiman
Sewua	Ablekuma-Afienya
Boadi	Amarhia
Ejisu	Maledjor
Ekyem	New Ningo

1.6.2 Data sources

Multiple data sources were used for this research, a strategy that enhanced data credibility. Documents, interviews, direct observation, participant observation and physical artefacts were used in this research. Samples of design layouts, allocation letters, court rulings and registers of land ownership were collected and used in the research. These documents were used to corroborate and augment data from other sources. Where evidence from documents was contradictory, further enquiries were made. For detail description of data collection see section 5.2.4

1.7 Analysis

A separate report was written for each case study area (see Chapter 6). Good governance criteria were used to classify the case study areas into functional and dysfunctional areas (see 8.2). Evidence from the functional and dysfunctional systems in Accra and Kumasi were analysed in Chapter 8.

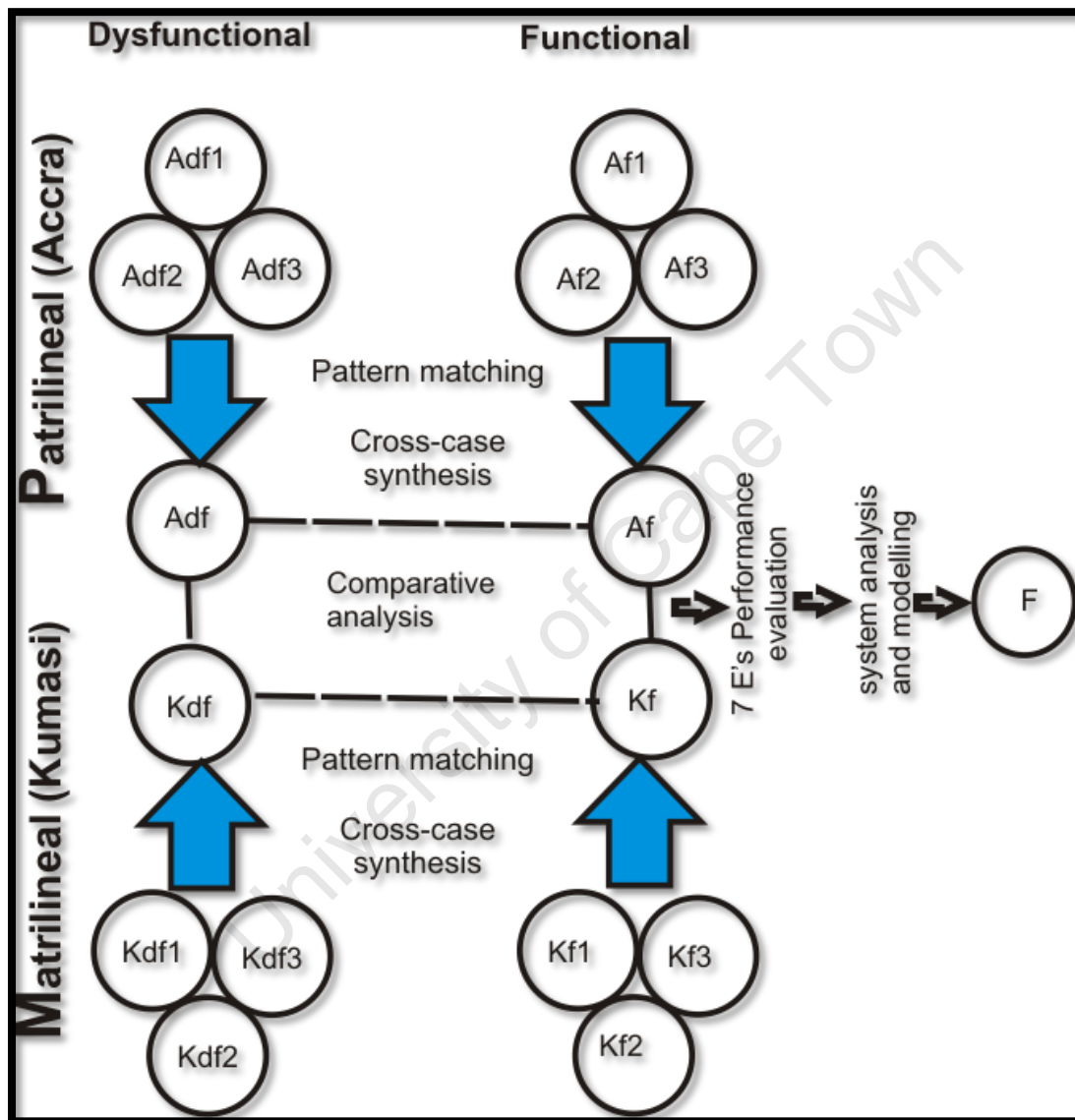


Figure 1-1: Case study design and analysis

A set of criteria for functional and dysfunctional urban customary systems were developed. The functional indicators were evaluated using the 7Es performance indicators used by Whittal (2008) to analyse fiscal cadastral reform (see 8.8). The Two Streams model of soft system methodologies (SSM) was used to analyse and develop a model for functional peri-urban customary land delivery and

administration. **Error! Reference source not found.** shows the case study design and analysis.

1.8 Personal Bias

The researcher was brought up in a customary environment, and had been involved in urban land acquisition in customary areas in both Accra and Kumasi. His training and work experience has been in positivist environments. Thus, he has a fair exposure to both formal and customary land administration systems. See section 5.2.5 for a more detailed description of the researcher's personal bias.

1.9 Research scope

This research aims at strengthening urban customary tenure for efficient land delivery. It focuses on using customary institutions and processes and, where appropriate, adapting such institutions to suite local circumstances.

Aspects beyond the scope of this research are:

- the detailed comparison and contrast of customary and formal land delivery and administration systems
- technical details of customary land delivery such as planning, layout design, surveying and database development.
- analysis of the social merits and demerits of patrilineal or matrilineal customary systems.

1.10 Contribution to knowledge

The study addresses the knowledge gap in peri-urban customary land access and administration. It provides insight into why most formalisation projects in customary tenure fail. Formalisation projects are usually simplistic. They often consider only the economic aspects of customary land and lose sight of the African worldview of land. The African worldview concept, to the best of the researcher's knowledge, has not been applied in peri-urban customary land administration or cadastral studies. Critical realism is proposed as the theoretical basis for studies in customary land administration. The research emphasises the fundamental role of the concept of African worldview in customary tenure, the need to ensure application of principles

of good governance in customary land administration and holistic assessment of customary tenure using the PESTLE (Political, Economic, Social, Technological, Legal and Environmental) analysis. Finally, a holistic model for systemic assessment of customary land delivery and administration systems is proposed and has the potential to inform policy and practice.

1.11 Outline of thesis

This thesis has eight chapters running through the theoretical and empirical stages to the conclusions. Each chapter presents a stage of analysing the research problem and answering the research questions.

Chapter 1: Introduction:

This is an introduction to the research. It provides a background to the research, problem definition, research objectives and research questions. The methods used, the data types, scope of research, contributions to knowledge are discussed, and the chapter ends with the outline of the thesis.

Chapter 2: Review of previous research in customary land tenure and administration

This chapter reviews recent research on customary tenure and land delivery. Among other things, the chapter reflects the importance of customary tenure to the communities; efforts that were made to formalise or replace customary tenure and land administration systems and the roles of traditional leaders, government and women in customary tenure. The impact of good governance and compulsory acquisition is also discussed. The chapter reviews theoretical, methodological and analytical frameworks useful for research in customary tenure and land administration systems.

Chapter 3: Customary tenure theory

This chapter concentrates on the theoretical framework of customary land practices especially in Africa. It analyses the African concept of land, customary laws and institutions, and strengths and weaknesses of customary tenure. Also discussed here are drivers of change in customary tenure, historic customary models, reform theories and recent innovations in customary tenure and land administration. The

chapter closes with good governance indicators and the selection of suitable criteria for good governance in the customary environment.

Chapter 4: General theoretical frameworks for peri-urban customary tenure

The predominant theoretical approaches forming the foundation and practice in scientific research (cadastral and customary tenure being subsets of scientific research) are summarised and critiqued. Critical realism is argued to be useful along with a social systems approach. Case study methodology, useful in the study of real word situations, is identified to be appropriate for the study of the complexities of peri-urban customary tenure and land administration. The Chapter concludes with a discussion of development and modernisation theories to ascertain the link between customary systems and development acceleration.

Chapter 5: Empirical research methodology

This chapter discusses methods for collection and analysis of empirical evidence for this research. Multiple case study strategy is argued with a variety of tools for data collection. Different systems methodologies are critiqued and the Two Streams Analysis of SSM is motivated.

Chapter 6: Case study narratives

Detailed descriptions of the cases are presented in this chapter. For purposes of future naturalistic generalisation, interpretation of the data is limited in this chapter.

Chapter 7: Formal institutions that partner with customary land administration in Ghana

The chapter discusses data obtained from formal institutions that collaborate with customary land administration in Ghana. These include the Office of the Administrator of Stool Lands (OASL), Land Registration and Survey and Mapping Divisions of the Lands Commission and Town and Country Planning Department.

Chapter 8: Analysis of customary peri-urban land administration

The Chapter analyses the case narratives beginning with a classification of functional and dysfunctional urban customary systems using good governance criteria. Patterns

within and between functional and dysfunctional cases were analysed and functional and dysfunctional factors assessed. 7Es performance indicators were used to evaluate the functional indicators and finally they were analysed by Two Streams Analysis of SSM. A model for peri-urban customary land delivery and administration was developed.

Chapter 9: Conclusions and recommendations

This chapter summarises the research conclusions in a manner structured in line with research objectives. Recommendations for further research conclude the chapter.

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2 REVIEW OF PREVIOUS RESEARCH IN CUSTOMARY LAND TENURE AND ADMINISTRATION

2.1 Introduction

Customary tenure is a community-based land administration system in which the community makes decisions and ensures their enforcement thereby ensuring security of tenure for those who abide by the norms (Alden Wily, 2008). It is overlaid with complex secondary rights so that no community member is left landless (*ibid.*).

Urbanization, demographic growth, diversification and modernization of the economy, and globalization and cultural change have had major implications for land tenure systems. The way customary tenure forms, in particular, react to such changes varies from place to place. In some cases, the power of customary authorities is increased while in others power is lost. In some places, customary authorities are effective in regulating land delivery but they are also able to circumvent the traditional checks and balances due to the changing environment. In such cases, there is lack of accountability, resulting in abuse of power and self-enrichment to the disadvantage of weaker members of the community who lose their land rights in the process. The rights of women, especially widows and divorcees are the most affected (Rose, 2002; Grigsby, 2004; Kapur, 2011).

The problem of peri-urban land rights is so acute that governments may try to intervene by compulsory acquisition of land at the urban periphery. This is, in most cases, not properly executed. Compensation is either not adequately paid or it is not paid at all. This leads to further problems between indigenes and land users (Akrofi & Whittal, 2012).

This chapter reviews current research on customary land tenure and compulsory land acquisition. It further investigates the use of theoretical, methodological and analytical frameworks used recently in land tenure research. The chapter concludes with a summary.

2.2 Review of research in customary tenure systems

2.2.1 *Customary tenure not just interest in land*

Land has always been an important aspect in defining and reshaping relationships between individuals and groups of people. Early anthropological studies in Africa have shown that territory was considered the most important criterion for defining a political system (Abdul-Jalil, 2006). Thus, the value attached to land is not only derived from its function of supporting livelihood, but also from its symbolic value as a criterion for group identification. For this reason, land tenure in most pre-colonial African societies was based on communal ownership of land, which was congruent with the prevailing subsistence economy and the political system centred on the tribe (Bennett, 2004; Fitzpatrick, 2005; Cousins, 2008; Aden Wiley, 2008; Kasanga, 2008; Ubink, 2008;).

Customary tenure systems vest land in the tribe, group or community, with individuals, in theory, enjoying only user rights. A basic tenet of traditional African customary tenure is that land belongs to the ancestors, the present generation and the generation yet unborn (Ollennu, 1962; Abdul-jalil, 2006). Thus, land is more than an economic asset; it has cultural and social values intimately connected to people's identities, statuses and social networks (Jul-Larsen and Mvula, 2009).

2.2.2 *Replacement of customary tenure*

Throughout the colonial period and even post-independence there has been persistent meddling in customary land tenure in sub-Saharan Africa under the guise of facilitating development and increasing agricultural productivity (Platteau, 2000; Besteman, 1994; Home and Lim, 2004; Fitzpatrick, 2005; Obioha, 2008; Peters; 2009). The assumption was that, customary tenure contributes to low productivity and hinders development (Besteman 1994; Home and Lim, 2004; Cotula and Cisse, 2007). Consequently, most African governments, in collaboration with donor agencies, have embarked on a variety of programmes to replace customary tenure with systems deemed more modern and developed to meet current housing and economic needs.

Besteman (1994) argues that, in replacing customary tenure, colonial and post independent administrations, introduced freehold or leasehold. Land policies that favoured government officials and the rich in society, resulted in loss of livelihoods for the poor.

Although the aim of replacing customary tenure was to improve productivity, numerous studies have shown that substituting customary tenure with individualised tenure does not necessarily result in increased productivity (Besteman, 1994; Platteau, 2000; De Souza 2001; Brasselle *et al.*, 2002; Home and Lim, 2004; Fitzpatrick, 2005; Obioha, 2008; Peters; 2009). On the contrary, such programmes have, in most instances, contributed to concentration of ownership in a few hands, growing landlessness, insecurity of tenure, wealth inequalities, and declining productivity. Cotula and Cisse (2007) caution that, state interventions range in outcomes depending on local socio-political configurations, and that if care is not taken, state interventions can facilitate or promote land speculation and profiteering by a range of different actors such as family leaders, chiefs and officials of formal land institutions, to the disadvantage of the poor customary rights holder.

2.2.3 *Changes in customary land tenure*

Changes in customary tenure occur as land is passed on from generation to generation. These changes occur because of internal and external pressures. In the course of the transmission as well as through experimentation, some key workable aspects of tenure are retained while others are lost (Kalabamu, 2000).

Juul and Lund (2002) assert that legal and institutional pluralism combine with a state unable or unwilling, to ensure constancy in rules. According to them, hierarchies encourage people to negotiate the state of affairs in order to either confirm or change it. All sorts of tactics and manoeuvres may be involved in transforming customary tenure.

Cotula and Cisse (2007), in an interdisciplinary study, which brought together insights from anthropology, sociology, economics, law and geography, explored changes in land tenure in Africa. The study analysed key factors that drive change in land relations on the continent, exploring how these affect customary land tenure.

They examined three strategic aspects of customary land tenure: changes in land rights within the family (taking into consideration gender and age), changes in land management institutions and changes in mechanisms for land transfers between groups and individuals. Analysing a case study from the Inner Niger Delta of Mali, they concluded that change in customary institutions in different parts of West Africa depends on local conditions, and these are hugely diverse (Cotula and Cisse, 2007). Meek (1940) noticed some changes in land tenure and inheritance in the then Gold Coast (Ghana) due to population growth and commercial agriculture. "... Owing to the development of the cocoa industry, enormous tracts of land formerly held in common have been converted into individual holdings" (Meek, 1940: 31). Meek also posits that some matrilineal tribes switched over to patrilineal principles (Meek, 1940). Such changes are attested to by Obioha (2008). Using key informant interviews, observations, and archival records, Obioha (2008) examines the changes that have occurred in various customary land regulations of the people of Awo-Idemili in Imo State, a rural community in Nigeria. It was observed that people do not observe the previous culturally defined channels of land acquisition and disposition (Obioha, 2008). Changes were observed in inheritance procedures and rights to dispose of inherited property. Customary land gifts, which were not to be sold by custom, were being sold in the community (Obioha, 2008). These studies clearly demonstrate that customary tenure is not static but flexible enough to adjust to meet both internal and external challenges as they arise.

2.2.4 Drivers of change in customary tenure

There are various factors that have contributed to changes in customary tenure. These include economic, socio-cultural, political, technological, demographic, environmental and globalization factors, all of which lead to scarcity of land (Meek, 1940; Macmillan, 1940; Gluckman, 1965; Okoth-Ogendo, 2000; Fitzpatrick, 2005; Nkwae, 2006; Chimhowu and Woodhouse 2006; Ubink, 2008; Arko-Adjei, 2011). Abdulai (2010) argues that the establishment of colonial rule in Africa introduced significant changes in customary tenure. The colonial authorities assumed control of land rights and all existing customary land laws were subordinated to their (colonial) land laws. These laws were not reversed after independence, when African leaders took over political control. Hall and Ntsebeza (2007) see lack of political will to change as problematic - "...at its heart, the land question is political – it is about

identity and citizenship as well as production and livelihoods – and can be resolved only through political processes” (Hall and Ntsebeza, 2007: 13). Thus political leadership is required to effect positive change for the poor majority in customary areas.

2.2.5 Customary tenure and peri-urban development and conflicts

Land administration systems in most peri-urban areas in sub-Saharan Africa operate in a pluralist environment (Nkwae, 2006; Home, 2010; Akrofi and Whittal, 2011c; Arko-Adjei, 2011) with statutes and customary law, government and indigenous institutions, traditional norms and corporate values operating in parallel. Access to land, however, is controlled by customary institutions, as such, areas fall outside the official urban boundaries (Akrofi, 2006; Nkwae, 2006; Home, 2010; Arko-Adjei, 2011).

In Tanzania, expansion of existing villages or towns and establishment of new towns mainly takes place on land that is mainly held under customary land tenure (Magigi and Drescher, 2010). Existing customary land rights are not regarded by the planning authorities when peri-urban areas are considered for urban development. Consequently, disputes arise due to conflicts when statutory tenure overlaps with existing customary land rights. The situation does not augur well for an inclusive urban development.

Lack of recognition of customary right holders and top-down approach to land use conversion from agriculture to urban-use leads to conflicts, creates divisions in the community and encourages informal urban growth. Informal developments often occur because customary right holders subdivide the land without recourse to the planning laws or building standards, in order to prevent the municipal authorities from taking over their land without consultation and adequate compensation (Akrofi, 2006, Akrofi and Whittal, 2011, Arko-Adjei, 2011; Home, 2010).

Nkwae (2006) argues that the problem with peri-urban land is lack of understanding of the real issues. Some researchers incorrectly assume that peri-urban land problems can be resolved by merely replacing customary tenure with western-based statutory tenure systems (De Soto, 2000; Peters, 2009). The peri-urban problem will persist

until viable land tenure and land administration solutions have been found (Cross, 1994). The reality is that there is no single cause for peri-urban land problems, and therefore there is no simple solution; the problems need to be tackled from multiple levels and directions (Nkwae, 2006; Homes, 2010).

2.2.6 *Affordable land in customary areas*

Home (2010) researched the proliferation of illegal land transactions and uncontrolled house-building at Mogoditshane, an informal settlement in Botswana. He observed that land for basic housing needs can be obtained easily and cheaply in the peri-urban areas even though such areas lack planning and basic infrastructure (Home, 2010). Similar observations were made by Ubink (2008) – Ghana, Jul-Larsen and Mvula, (2009) – Malawi, and Chimhowu and Woodhouse (2010) – Zimbabwe. Thus, contrary to the notion that customary tenure does not promote land markets, there is a form of ‘land market’ in customary areas. To improve the planning situation in these areas requires robust local land management structures that would combine technical functions (such as planning and infrastructure) and traditional land management with more inclusive community participation and the application of land readjustment (Cross, 1994; Home, 2010).

A review of court cases in Malawi indicated that the poor benefit more than the rich in dealing with claims that are ambiguous, variable and negotiable (Jul-Larsen and Mvula, 2009). The study showed that the inherent ambiguities in customary tenure make accumulation of landholdings difficult and often serve the interests of the poor. Wealthy people prefer to invest in private land that the government has allocated to estates outside the realm of customary tenure. It was observed that various customary laws facilitate a re-appropriation of private land into customary land in the long run (Jul-Larsen and Mvula, 2009). With the wealthy opting out of the ‘ambiguous’ customary areas, the poor are able to access land through the customary land market.

Market-based access to land has been in operation in customary areas in Africa for over a century (Durand- Lasserre, 2006; Amanor, 2006; Chimhowu and Woodhouse 2006; Kasanga, 2008; Ubink, 2008). In a typical case study of contemporary dynamics of land access and use in Svosve in Zimbabwe, Chimhowu and

Woodhouse (2010) observed that some commercial transactions take place in customary areas. These are spearheaded by traditional leaders who are responsible for customary land administration. Recognition of the 'vernacular land markets' is essential if state land policies are to succeed in promoting the interests of the poor.

2.2.7 Traditional leaders and land management

Traditional authority constitutes a hierarchy of local leaders with kings at the top, followed by chiefs, sub-chiefs, area or village heads and with village heads at the lowest level. Chieftainship was and still is in many parts of Africa, a noble institution, although it can seldom be found in its pure form today. In the past, most African societies practiced mixed farming and were ruled by chiefs who ensured that their societies were properly ordered (Bennett, 2004; Kasanga and Woodman, 2004; Jul-Larsen and Mvula, 2009; Crook, 2008). Tonah (2008) reports that, in places where there were no chiefs before the colonial administration, like Biu in Northern Ghana, clan heads were transformed into chiefs to serve in the Native Administration systems imposed by colonial powers. In South Africa, Bennett (2004) discusses how the Native Administrative Act of 1927 corrupted chieftainship by making the Governor-General the Supreme Chief and gave him authority to create and divide tribes and appoint any person as a chief. Thus the colonial administration recognised the enormous power that chieftaincy wielded and tried to capitalise on this to their advantage. For example, traditional leaders were used to enforce unpopular state land policies (Meek, 1940).

In the pre-colonial years, chiefdoms were characterised by rivalry and competition for authority. This led to fragmentation and reformation of chiefdoms following shifts in power. Recognition of chiefs was based on the fact that they were of royal descent, along with many of the subjects (Bennett, 2004; Crook, 2008; Tonah, 2008).

2.2.7.1 Duality of the role of chiefs

Miller and Skinner (1968) report a duality in the role of the traditional leader. From the perspective of the higher echelons of government, the traditional leader is seen as an individual who goes about managing his local affairs and carrying out, with varying degrees of success, the policies and hopes of the government and his elders.

However, to his subjects, he is a man of authority, wealth, and a living ancestor who mediates between the ancestors and the living (Boafo, 2000).

2.2.7.2 Chief as an agent between government and people

A good traditional leader is indispensable to development. He/she can mobilise and energise the community for development and even cause attitudinal changes. However, the leader's lack of initiative can retard development (Miller and Skinner, 1968; Boafo, 2000; Ubink 2008). Miller and Skinner (1968) observe that, although traditional leaders have been legally deposed by many independent African governments, they continue to exercise substantial influence. They assert that the political survival of traditional leadership is significant because it provides the vital linkage between the government and the people, especially in rural and peri-urban areas (Miller and Skinner, 1968).

2.2.7.3 Customary land allocation

In the past, chiefs were responsible for customary land allocation in most of sub-Saharan African countries. They also provided help in times of economic need and were viewed as assistants in rain making. They resolved disputes between subjects and ensured the maintenance of what were considered to be proper relationships with ancestors. In return, subjects provided labour when needed and also paid tribute to the chief. In almost all areas, there were clear distinctions between indigenes, bound by common tradition and ethnicity and those foreign to the area (Boafo, 2000; Bennett, 2004; Kasanga and Woodman, 2004; Crook, 2008; Delius, 2008; Jul-Larsen and Mvula, 2009).

In Zimbabwe, the control of access to land by chiefs has been erratic (Chimhowu and Woodhouse, 2010). The colonial administration took the right to allocate land from traditional authorities but returned it to them about a decade before independence in April 1980. However, after independence, the right to allocate rural land was transferred to elected representatives - Local Development Committees (Chimhowu and Woodhouse, 2010). In spite of this, the authors assert that legitimate authority was, in many localities, shared between committees of the ruling party, elected councils and customary leaders, often with considerable overlap between the memberships of these different bodies (Chimhowu and Woodhouse, 2010). In

Zambia, however, statutory law empowered the person of the chief and not the institution of the chieftaincy as the land authority of the chiefdom (Metcalf and Kepe, 2008). The Zambian government cannot alienate any land in chiefdom without consulting the chief of the area (Metcalf and Kepe, 2007).

2.2.7.4 Traditional authority and democracy

Bentley (2005) argues that the attainment of a workable balance between the powers of traditional authorities and democratic rights of the people in the communities over which they preside could constitute a test of democracy. Whitehead and Tsikata (2003) assert that although women have long had access to land in sub-Saharan Africa, men and women have rarely, if ever, had identical kinds of claims to land. Each gender has a different position within kinship systems that are the primary organizing order for land access and this works against women (Whitehead and Tsikata, 2003).

2.2.8 Government reaction to democratic issues in traditional authority

Bentley (2005) identified three approaches that governments used in interfacing with traditional authorities:

- The non-interference approach: Here, the state is restrained from intervening in traditional authority and their norms, even when these norms are non-egalitarian and potentially a threat to individual rights of members (Ubink, 2008). This often leads to land disputes between traditional leaders and land right holders.
- Enforcement on the part of the state: This is the approach of liberal egalitarians, who insist that equal recognition for one's culture cannot conceptually include using that recognition to treat others unequally. This approach critiques entrenched cultural rights that give some people power over others. It rejects the compatibility of traditional leadership and women's rights. It requires high cost of enforcement on the part of the state to ensure equal rights.
- Compromise: This option requires deliberation and negotiation of a compromise. It upholds both the rights of members and the group. This approach insists that all parties must be regarded as having an equal say in

what their norms are. Traditional communities could agree to different arrangements that accommodate the powers of traditional leaders and recognize democratic rights of all members of the community including those of women (Bentley, 2005). The compromise approach is critical in a research such as this to ensure efficient land delivery with active participation of all stakeholders.

2.2.9 Women's land rights and access to land in customary areas

In sub-Saharan Africa women's land rights are linked to those of the family (Bukh, 1979 – Ghana; Kalabamu, 1998 – Botswana; Franklin, 1995 – Lesotho, Rose, 2002 – Swaziland and Malawi; Grigsby, 2004 – Senegal Itani, 2007 – Tanzania; Kapur, 2011 – Mozambique; Lastarria-Cornhiel, 1995 – Sub Saharan Africa). Converting customary rights to formal rights through registration, deprived women of their rights and in certain instances they become landless. When landless, women are forced to resort to informal means to access land. In this way, freehold breaks down social cohesion and adversely affects the culture of some sub-Saharan Africa countries. A review of literature indicates that marriage remains the most important means of access to land in customary areas for women (Rose, 2002; Yngstrom, 2002; Whitehead and Tsikata, 2003; Grigsby, 2004; Itani, 2007; Peters and Kambewa, 2007; Kapur, 2011). Wives acquire both the right and obligation to cultivate land. They are also expected to fulfil certain labour obligations, such as subsistence food provision (de Janvry and Sadoulet, 2001). Divorced women, however, have no claims on land they acquired through marriage in most areas (Lastarria-Cornhiel, 1995; Rose, 2002; Yngstrom, 2002; Whitehead and Tsikata, 2003). Women who are separated from their husbands are liable to lose the land rights they gained through marriage over time. Single women in most customary areas can only access land through their male relations (Rose, 2002; Whitehead and Tsikata, 2003; Grigsby, 2004; Peters and Kambewa, 2007).

Kapur (2011) argues that women's' economic participation in urban development necessitates the use of statutory provisions which guarantee gender equality in land rights and inheritance. Formal law, however, is limited in this regard because the majority of the population continues to be governed by customary law. Although international human right treaties have enhanced the articulation of women's' land

rights in accordance with human rights principles, in customary areas, there is a general disregard for these laws. Kapur (2011) stresses a need for the study of customary law at community level to improve on the situation. “Any property system must be respected locally because central governments of developing countries are too institutionally resource poor to effectively, administer and enforce a comprehensive law scheme” (Kapur, 2011:74). Thus women’s land rights cannot be enforced locally by international legal treaties without local input.

2.2.9.1 Does matrilineal or patrilineal inheritance make a difference in women’s land rights?

There are two general customary inheritance systems in sub Saharan Africa, matrilineal where succession is through the bloodline of the mother and patrilineal where inheritance is through the male line (Meek, 1940).

Peters and Kambewa (2007) observed in Zomba-South in Malawi that inheritance is matrilineal and daughters inherit land but sons have no inheritance with regards to land and have to leave for their wives’ villages to access land. On the other hand, Kapur (2011), studying another matrilineal group in Mozambique, observed that control of land rights are vested in maternal uncles or nephews to the disadvantage of women. This is confirmed by Lasterria-Cornhiel (1995) who asserts that inheritance in matrilineal systems only benefits men and that, women in these families have land rights through their male relations. Meek (1940) reports that some matrilineal groups in West Africa “are being compelled by new conditions to become patrilineal” (Meek, 1940: 4). He attributed this to the spread of Islam and through direct and indirect policies of the “British administration which encouraged patriliney and patripotestal authority” (Meek, 1940: 27). This may explain why inheritance in sub-Saharan Africa is predominantly patrilineal. Thus indirectly, colonial history had played a role in the skewed inheritance practices in sub-Saharan Africa.

In patrilineal systems males are entitled to land for building, farming and communal areas for grazing and hunting (Nkambwe, 2001 – Botswana; Rose, 2002 – Malawi and Swaziland; Itani, 2007 – Tanzania; Kapur, 2011 – Mozambique). Women are allowed to use land through their male relations but have no control of the land or its management (Lasterria-Cornhiel, 1995; Rose 2002; Grigsby, 2004). Whitehead and

Tsikata (2003) have criticised the content of customary law, in which women's rights in land are described as derived and secondary, depending on their relations with various men – fathers, brothers, husbands and sons. Such rights are subject to change and are usually dependent on a good relationship with the involved parties. Women either have no inheritance or their inheritance rights are inferior to those of men. This needs critical attention to accord with equal human rights principles enshrined in most constitutions in sub-Saharan Africa.

Formal titles treat women similarly. Empirical evidence by Moyo (2000) indicates that over 87 per cent of the registered landowners whose farms were earmarked for compulsory acquisition in Zimbabwe, were male, while about 23 per cent of the farms were jointly owned and women owned less than five per cent. The problem of land rights discrimination against women is not only limited to customary tenure regimes, so changing from customary tenure to individualized tenure will not necessarily solve the problem of women's land rights.

2.2.10 Customary boundaries and chieftaincy disputes

Customary boundaries exist as the furthest extent of discrete village or clan areas. Boundaries of most customary areas are not precisely known (Sirait *et al.*, 1994; Gbaguidi and Spellenberg, 2004; Juma *et al.*, 2004; Mends and de Meijere, 2006; Fitzpatrick, 2006; Cousins, 2008). Forest areas, swamps, mountains, rivers or other natural resources are normally used as boundaries (Alden Wily, 2008). In many instances colonial and post-colonial governments exacerbated the problem by overlaying new administrative boundaries to suit their convenience, compounding the boundaries issue (Le Meur, 2002, Alden Wily, 2008; Cousins, 2008).

Land in the African worldview is seen as an ancestral to the living, which is to be preserved for future generations, places a lot of responsibility on chiefs and their communities. They need to do all in their power to bestow the land intact to the next generation. Consequently, boundary litigations and chieftaincy disputes were and still are major factors in customary areas (Berry, 1998; also see 6.3.6; 6.10.3; 6.12.1 and 6.14.5).

Berry (1998) avows that most stools in the Gold Coast were in debt, mainly because of boundary litigations with their neighbours. Chiefs levied their subjects to defray the cost, sometimes, leading to perennial conflicts (Berry, 1998). “Subjects rarely repudiated chiefs' right to make demands on them, and were more likely to complain if they failed to litigate in defense of the stool's lands than if they spent money in doing so” (Berry, 1998: 44). Thus, subjects were willing to support their chiefs to litigate to save their ancestral land. Apart from litigation between neighbouring communities, there were also numerous internal conflicts. These resulted from the pursuit of wealth and legitimacy of chiefs as well as from internal conflicts between royals and conflicts between privileged lineages (including royals) and other subjects (Berry, 1998). Protests were not against the institution of chieftaincy but rather against unscrupulous chiefs (Berry, 1998; Ubink, 2008b). Chieftaincy disputes, Berry concludes, “were neither symptoms of the 'breakdown' of traditional order and morality nor simple manifestations of newly emerging patterns of class conflict, but part of an on-going struggle to define and exercise legitimate authority in a society both transformed and destabilized by the imposition of colonial rule” (Berry, 1998:40).

Lack of boundary documentation and unsurvey boundaries has been a source of conflict in many customary areas. Any improvement of customary land administration will therefore need to have a closer look at the issue of boundaries and illegitimate pursuit of wealth by traditional leaders.

2.2.10.1 Demarcation of boundaries

Identification and definition of customary boundaries are very important in determining how indigenous people organize and allocate space (Sirait *et al.*, 1994), however, not much research has been done on this. Recording tenure claims of local communities could ensure that government plans on resource use would not conflict with those of the community and create litigations. Customary land use and interests have been demarcated by the use of oral history, traditional knowledge, sketch maps and modern techniques like, the global positioning system (Sirait *et al.*, 1994; Gbaguidi and Spellenberg, 2004; Juma *et al.*, 2004; Fitzpatrick, 2006; Mends and de Meijere, 2006).

Mends and de Meijere (2006) studying the process of urban land acquisition and conversion of customary land in Accra, observed that customary land boundaries are fuzzy, generally following natural features. It is difficult to define boundaries between adjoining lands owned by different families. Furthermore, instead of documentation, boundaries were recorded in memory. This results in inter-family conflicts. Improving boundary demarcation will reduce litigation between customary land holders and between adjoining customary communities.

2.2.11 Land records

Local land records or registers are important for maintaining and disseminating information that would enable more informed land management decisions. However, in most customary areas land records are non-existent (Nkambwe, 2001). Witnesses present during the transactions are the only records. Rakai and Williamson (1995) contend that incorporating customary land tenure data into a land information system (LIS) raises issues of economic, social, cultural, technical, institutional, legal and political significance. They argued that funding of customary land information systems would be expensive since customary tenure is unique and dynamic to every jurisdiction. Nkambwe (2001) asserts that customary officials create local information systems and therefore information does not flow freely for efficient management.

2.2.12 Good governance in customary land administration

Customary tenure institutions in peri-urban areas raise important issues of good governance, which relate to effective customary land delivery (UN-HABITAT, 2008; Arko-Adjei *et al.*, 2010; Arko-Adjei, 2011; Akrofi and Whittal, 2011b). Good governance is crucial to ensure secure land rights and tackle issues of vested interest, bureaucratic inertia, corruption, unaccountable resources, and discretionary practices (UN-HABITAT, 2008). Traditional leaders in customary areas hold the land in trust for their communities and so they must be accountable to their communities (Arko-Adjei *et al.*, 2010; Arko-Adjei, 2011; Akrofi and Whittal, 2011b). Peri-urban areas are increasingly becoming integral parts of urban development (Pieterse, 2009) and therefore requiring good governance.

2.2.13 Security of customary tenure

The goal of providing tenure security which is administered in a cost-effective way, through institutions that combine legality and social legitimacy, should be the prime objective of every efficient land administration system in sub-Saharan Africa (Broegaard, 2005; Christensen, 2005; Fitzpatrick, 2005; UN-HABITAT, 2008; Abdulai, 2010; Arko-Adjei, 2011). UN-HABITAT (2008) elucidates that secure land rights have multiple benefits for the poor, and may raise them out of poverty. They advocate for a continuum of land tenure options that ensure varying security of tenure (UN-HABITAT, 2008).

2.2.13.1 Continuum of land rights

There is a school of thought that asserts that land tenure security varies along a continuum from a less secure tenure, which can be upgraded to a more secure tenure and finally to individualise tenure that is assumed most secure (Christensen, 2005; UN-HABITAT, 2008; Arko-Adjei, 2011). This view is criticised (Akrofi and Whittal, 2011c) in that, security should be seen from the perspective of the right holder, which is evidenced that freeholder has less secure tenure (Broegaard, 2005) than other supposedly lesser titles. Thus, tenure security is not linear moving from less secure to most secure, but is dependent on legal, institutional, and other local conditions.

2.2.13.2 Security of tenure and registration

Brasselle *et al.* (2002) observed that where formal titles (registration) are expensive to create and maintain, it is only farms with high profitability that can afford such high expenditure, which get registered. Consequently, registration does not stimulate investment but it is positively related to it (Brasselle *et al.*, 2002). With customary rights, security of tenure may depend on past investment or continuous use (*ibid.*). The planting of trees, is a recognised method of tenure security (De Souza, 2001; Brasselle *et al.*, 2002; Fitzpatrick, 2005). Thus, lack of individual land titles does not necessarily indicate insecure land tenure nor does the availability of formal titles necessarily strengthen tenure security.

2.2.13.3 Security of tenure and investment in land development

Growing evidence is calling into question the assumption that individuals will invest only if their land rights are secure (Feder *et al.*, 1988). It has been observed that basic

use rights were sufficient to induce farmers to make land-specific investment. This did not rely on holding transfer rights or the ability to bequeath (Brasselle *et al.*, 2002) but rather depended on elements such as the local legitimacy of property rights, good relations with the previous owners, long duration of possession, and economic wealth (Broegaard, 2005).

De Souza (2001) distinguishes between house and land tenure and posits that perceived rights to shelter are based on a households' need for housing and not the legal rights to occupy the land. Personal security issues and supportive networks were observed to activate informal housing markets, and these two factors are crucial in determining housing processes, (De Souza, 2001). People improve and consolidate their houses despite the lack of security, De Souza (2001) argues, because tenure security is not a pre-requisite to personal safety and comfortable shelter requirement.

2.2.13.4 Perceived security of tenure

Broegaard (2005) in Nicaragua demonstrated the need to conceptualise security of tenure from the perspective of the landholder. Attention needs to be paid to inequalities of wealth and power, lack of enforcement and impartiality on the part of formal institutions and specific historical context when addressing security, in unstable and contested environments. The study shows that land titles did not provide equal degrees of tenure security to all landholders and that lack of individual land title does not necessarily imply a situation of insecure tenure. Rather, the data suggested that there are multiple sources of legitimacy of property rights, and that formal legitimacy may not provide social legitimacy. Also, the degree of perceived tenure security that is created by a land tenure document may be more dependent on the local legitimacy of the issuing authority than on the legal status of the title.

2.3 Compulsory acquisition

Most governments have laws that allow them to acquire land compulsorily in the interest of the public (Kasanga *et al.*, 1996; UNCHS, 1991; Simpson, 1976; Williamson *et al.*, 2010). The use of such laws in sub-Saharan Africa has never been popular because compulsory acquisition extinguishes all prior interests and encumbrances on the land. The only right remaining to previous holders is

compensation, which is usually determined by the appropriate government agency (UNCHS, 1991; Kasanga *et al.*, 1996; Larbi, 2008) often without much consultation with the affected communities. Affected right-holders therefore contest the loss of their rights in land, and challenge the acquisitions in court and thereby prolong the process of acquisition. Grievances are about the lack of involvement of affected stakeholders and the compensation to be paid (Larbi, 2008; Williamson *et al.*, 2010). Moyo (2000) observed, in Zimbabwe, that the excessive state-driven model of compulsory land acquisition had its own problems, including slow acquisition of costly land and the encroachment of vested interests on the land reform program.

The UNCHS (1991) argues that an effective land acquisition law must be precise in conceptualisation and wording, be capable of review and updating, be enforceable, understandable to the layman, and be fair in its application and its impact on the various sections of the community. It must also respond to the cultural, social and economic reality of the people (UNCHS, 1991). These conditions are rarely met in peri-urban areas where land is acquired for urban use without consultation with either land right holders or adequate compensation paid (Larbi, 2008; Magigi and Drescher, 2010). Compulsory acquisition will be further probed in this research to add knowledge of its use and effects in customary peri-urban land in Ghana.

2.4 Review of theoretical frameworks

Whittal (2008) investigated appropriate philosophical paradigms for fiscal cadastral systems research in Cape Town using the GV2000 Project as a case study. She advocated a holistic approach and an inclusive world view including technical, social and personal aspects of fiscal cadastral research. She concluded that critical realism was a suitable theoretical basis for research in fiscal cadastral systems, and that a social systems approach facilitates a holistic investigating including both the natural and social aspects of the system. Also, a pluralist multimethodological approach facilitates identification of a suite of suitable and complementary tools for research and analysis of cases of fiscal cadastral systems (Whittal, 2008). Customary tenure is multifaceted involving social, political, cultural, historical and geographic contexts. Critical realism, which accommodates the integration of functionalism/positivism and interpretivism and also facilitates the adoption of methodologies from a variety of paradigms, is useful.

2.5 Review of research methodological frameworks

A scientific methodology is a system of explicit rules and procedures upon which research is based and against which claims for knowledge are evaluated (Calvalho IV, 2006). This research covers a wide area, ranging from socio-economic, technical, historical, land administration and religious contexts. It therefore requires concepts from different paradigms since it cannot be adequately discussed why a single methodology perspective. Hence different research methods are used to address the research questions. Recent research methodologies that are relevant to this research are reviewed in the following section.

2.5.1 Case study

Case study strategy has been used widely to research various aspects of cadastral and land tenure research (see 2.5.1). Out of ten recent doctoral research projects on cadastral development, all ten researchers used case studies; nine of them used multiple case studies and only one researcher used quantitative methods (Cagdas and Stubkjaer, 2009).

Nkwae (2006) used multiple case studies successfully to evaluate land tenure and land administration in three former British Colonies in Southern Africa, namely Botswana, Malawi and South Africa. All three cases had problems with customary tenure and informal settlement development. The cases were selected to analyse and evaluate land administration reform options. The data collection options were documentary, interviews, questionnaires and field observations. Nkwae (2006) alluded to the fact that, although no wholesale importation of the findings is possible because each locality is unique, useful lessons pertaining to peri-urban land problems can be drawn from it. Similarly, Whittal (2008) and Arko-adjei (2011) have applied single and multiple case studies respectively to investigate cadastral problems, and found them useful. This research will also use multiple case studies to investigate functional aspects of customary tenure and administration systems in peri-urban areas of Accra and Kumasi.

2.5.2 Systems thinking

Fourie and van Gysen (1995) argue that cadastral systems will be understood better if treated as integrated whole rather than being seen as disassociated collections of

parts or subsystems. The various parts, their interdependence and how they are connected, should be analysed together to get an accurate picture of the cadastre. Bennett *et al.* (2008), thinking along similar lines asserts that organisation of land information for sustainable land administration should be treated holistically. They argue that integrated management will provide better land information for policy makers and will result in better land use decisions. Lack of integration can lead to confusion and cause information voids (Bennett *et al.*, 2008). Zevenbergen (2002) had also cautioned against the tendency to isolate and study different components of land administration, rather than holistically for better understanding. He posits that although systems look at the elements and interactions holistically, they also make provision for subsystems. Thus legal, technical and organisational subsystems of land registration should be examined holistically in order to derive emergent property like trustworthiness from the system.

Barry and Fourie (2002), referring to the South African cadastral system just after the dismantling of Apartheid, a period of uncertainty and change, argue that such a situation lends itself to systems thinking and systems concepts, particularly soft systems thinking. Analysis of a cadastral system, they stressed, has to go beyond the cadastral system and include the land management system.

Nkwae (2006) successfully used a soft system based analytical framework to guide analysis, modelling and design of land tenure and administration requirements in southern Africa. He used the 3Es (efficacy, efficiency and effectiveness) and concluded that a systems approach incorporates different world views and is able to understand the structure peri-urban land problems holistically. Similarly, Whittal (2008) used systems to analyse the fiscal cadastre of the City of Cape Town and found it useful. Systems thinking will be used to study and understand the complex nature of customary tenure and land administration systems and to recommend ways it can be improved.

2.5.3 Worldviews

In sub Saharan Africa, for indigenous societies, the relationship between the individual and community is dialogical. The identity of the individual and the community is dependent on each other (Chike, 2008). The individual is not prior to

the community neither is the community prior to the individual (Eze, 2008). Eze (2008) argues that the politics of common good within the African value system can neither be described nor represented through consensus or unanimity but through a realist perspectives or a worldview (Ubuntu ontology) not abstract from living traditions, cultures, and values that characterize the people(s) of sub-Saharan Africa (Eze, 2008). Dzobo (1992:132) expresses it powerfully: “*we are, therefore I am, and since I am, therefore we are*”. By this assumption, in advancing the good of the community, the individual’s good is concomitantly advanced precisely because the community and the individual’s good are not radically opposed but interwoven. Chike (2008) identifies three major aspects that characterise the African worldview namely, religion, community and the concept of time. He explains that to the indigenous African, the ‘material’ and the ‘spiritual’ are interwoven and must not be separated. The indigenous African holds up the community and understands the individual and the rest of the world with reference to the community. With respect to time, he argues that the African mode of perceiving time points to the focus of actual events rather than on abstract chronology (Chike, 2008). The African worldview is crucial for researching all aspects of African customary tenure. It has a direct bearing on how land is held, the duration of the tenure and interest in land for the past, present and future generations.

2.6 Analytical framework for customary tenure

Whittal (2008) developed a methodology of performance measurement structured into systems thinking framework containing the following categories: efficiency, efficacy, effectiveness, elegance, empowerment, emancipation, exception and emotion. This framework, called the 7Es framework is noted as possibly useful for general performance measurement of change management projects. She successfully used this to measure the performance of the fiscal cadastre of the City of Cape Town.

Arko-Adjei (2011) assessed land administration using good governance concepts (participation, equity, transparency, accountability and efficiency and effectiveness) and found them useful. Both good governance criteria and systems analysis are identified from prior research to be useful for this research.

2.7 Chapter Summary

Customary tenure is very diverse in sub-Saharan Africa and very dynamic in its adaptation to prevailing circumstances. It has adapted reasonably well to changing socio-economic, demographic and technological pressures. The idea that customary tenure is static, rigid, and restrictive and as such unable to provide security of tenure or to make provision for individual land rights has been shown to be untrue. Yet there are still scholars and practitioners holding onto these old ideologies and negatively influencing policy.

There are complex drivers of change in customary tenure that can weaken the system in most places. Generally, state policies towards customary land opened up avenues for abuse and degrading of customary systems.

Efficient customary urban land delivery should ensure security of tenure for majority of the poor landholders. Secure customary urban tenure should be administered in cost-effective way, through institutions that combine legality with social legitimacy.

There are two schools of thought concerning registration, investment and security of tenure. Empirical evidence in the literature indicates that, for customary areas, security of tenure depends on investment. As the level of investment increases so is the security of the land holder. Particularly with respect to housing, personal security is paramount to tenure security and lack of individual title does not necessarily mean land tenure insecurity, neither does the availability of formal title necessarily strengthen tenure security.

Security of tenure for women under customary tenure is mixed. There are some matrilineal areas where women enjoy maximum tenure security, while in most patrilineal areas they are disadvantaged. In almost all customary areas, however, women have usufruct rights so long as they abide by the norms of the society. Evidence from Mayo (2000) indicates that the problem of women's' land rights is not limited to customary tenure systems only.

Security of tenure in peri-urban areas is particularly precarious (Nkwae, 2006). To address the situation governments try to acquire land compulsorily to ensure urban

development. However, the way compulsory acquisition is carried out may compound urban problems (see **Error! Reference source not found.**).

Customary tenure has not disappeared and it is not likely to do so soon. It has been shown to adapt to pressures from within and without. There is insufficient information in the literature as to why customary tenure has survived despite all the attempts to replace it. There is also not much information on whether some customary land administration systems are doing well and why. This research attempts to fill these gaps in the literature.

University of Cape Town

3 CUSTOMARY TENURE THEORY

3.1 Introduction

Policy on customary land tenure may be understood in terms of two principal paradigms. The first propagated for some years by the World Bank (1975), and recently given renewed prominence by De Soto (2000), identifies ambiguity and negotiability of rights under customary tenure as characteristics that impede productivity and investment. It is argued that customary rights in land cannot be used as collateral against loans from the formal banking systems. Land held under customary tenure may therefore be viewed as ‘dead capital’ (De Soto 2000). This perspective may explain why many African governments tried to convert customary rights to state-recognized property rights. Although the World Bank has modified its position slightly, it envisages registration of group rights as a possible first step in such a process that will eventually lead to the individualised property (Deininger 2003).

Land rights are significant factors in determining investment in land improvement, use of inputs, access to credit or productivity of land. Place and Hazell (1993) observed that under customary tenure systems eligible members of local lineages or kingship groups have assured access to some amount of land. In contrast, they observed that in Kenya, where land has been widely titled and individualised, and vestiges of customary tenure still impinge on the freedom to alienate land (*ibid.*).

Advocates of the second paradigm call for recognition and reinforcement of customary rights to land (Toulmin and Quan 2000; Toulmin *et al.* 2002). They oppose land title registration – particularly individualized title – on the grounds that it favours the wealthy, who are better placed to deal with the bureaucratic procedures and the cost involved in creating and maintaining individualized titles. Proponents of this view also argue against the assertion that individual property promotes land markets and allows the registered land to be used as collateral (Migot-Adholla *et al.* 1991). Conversely, they argue that development of a formal land market opens the possibility of distress-sales by the poor in times of hardship, thus accelerating social differentiation and landlessness among the poor. Again, land titling generally involves registration of only primary rights and excludes secondary or seasonal

rights (e.g. to grazing, firewood and wild food gathering) that are likely to be important ‘safety-net’ rights for the poor under customary tenure (Toulmin and Quan 2000). Thus land titling does not always favour the poor. For advocates of this second paradigm, access to land through kinship under customary law offers the possibility of re-allocation of land to poorer community members on the basis of need, and the consequent ambiguity, or non-final, character of customary rights is thus not a source of insecurity, but a positive feature that ensures continuing access for the poor (Chimhowu and Woodhouse, 2006).

Customary leaders are vital for customary land management. They also act as mediators of disputes and try to achieve social harmony in the community. To enhance customary land management it is important to apply some principles of good governance – efficiency and effectiveness, transparency and accountability, equity and fairness, participation, integrity, stable administration cost and affordability (Akrofi and Whittal, 2011b).

3.1.1 The African concept of land

In the indigenous African context, humankind and land are inseparable. Indigenous African culture, values and worldviews are all products of the African concept of land (Asante, 1965; Adewoye, 1989). There are religious, social and political connotations to land and any reform policy should take cognisance of these. “These religious, political and social conceptions of land are intertwined with land use practices, making it difficult to separate tenure from people’s culture” (Arko-Adjei, 2011:21).

Land is for the living who received it from their deceased ancestors, who are still considered integral part of the community and are venerated on special occasions. The living, on the other hand, is to act as faithful stewards, use the land judiciously and preserve it for future generations (Ollennu, 1962). The Ghanaian concept of land ownership is captured in the quote below:

Concepts of land ownership were thus bound up with the cult of ancestral worship. This cult is predicated on the belief that the departed ancestors superintend the earthly affairs of their living descendants, protecting

them from disaster and generally ensuring their welfare, but demanding in return strict compliance with time-honored ethical prescriptions. Reverence for ancestral spirits dictated the preservation of land which the living shared with the dead. In effect land was an ancestral trust committed to the living for the benefit of themselves and generations yet unborn. Land, then, was the most valuable heritage of the whole community, and could not be lightly parted with (Asante, 1965: 852).

The situation is no different in other sub-Saharan African countries. The real owner of land in Shona Traditional area in Zimbabwe “is the tutelary spirit, *Mwari* and the various territorial ancestor spirits. So the environment belongs to the spirits. It is sacred (*kuyera*). Land is sanctified by its possession by the ancestor spirits whose remains are buried in it. So it is the spirits who look after their property” (Taringa, 2006: 194). Thus land to the African is more complex than a commodity or a factor of production.

Land is also considered as the basis of citizenship or community and a unifying factor among people. In the pre-colonial days, chiefs spoke of lineages under them with no regard to the territory (Kyeremanten, 1971). However, such simple forms of political structures have evolved into more complex organisations in which territorial elements have gained prominence. With migration and rapid urbanisation, most areas are no longer homogeneous but heterogeneous. In many places non-indigenes are not considered part of the local political structure unless they opt for it and are adopted into such lineages (Kyeremanten, 1971).

Williamson *et al.* (2010) list an array of concepts of land such as : terra firma – ground on which we live; physical space, a deity, community, ‘property’, ‘factor of production’, ‘capital’, ‘consumer good’, ‘commodity’, ‘human right’, nature, a resource and as environment. Suffice to say that some of these concepts are not compatible with the African worldview and are not discussed here.

3.2 Customary tenure

Customary tenure is the predominant mode of land holding in sub-Saharan Africa (Meek, 1940; Asante, 1965; Nkwae, 2006, Arko-Adjei, 2011). Under customary

tenure, land is held by clans or families based on diverse combinations of rights, ranging from group to individual rights. Rights are accessed based on group membership and social status (Asante, 1965; Cotula and Cisse, 2007; Fitzpatrick, 2005; Cousins, 2008; Aden Wiley, 2008). Strangers or non-indigenes accessed land by renting or engaging in share cropping (da Rocha and Lodoh, 1999). Customary land tenure systems vary considerably from one group to the other and there are variations depending on the land use practices (Cotula and Cisse, 2007).

Customary systems are managed by traditional leaders, using customary norms and practices prevailing in the particular community at a time. Consequently, customary systems are not static, but dynamic and flexible with changing norms. They continually adapt to diverse internal and external changes such as cultural interactions, population pressures, socio-economic change and political processes (Berry, 1998; 2009a; 2009b; 2013; Lund, 2008).

The notion of customary rights has been under contention in Ghana. Amanor (2008) argues that customary tenure “authenticate the commoditisation and appropriation of land and to transfer user rights into alienable rights” (2008: 78). It is constructed around alliances between the state and local power elites - dating back to the days of Indirect Rule based on Native Authority and chiefly rule (Amanor 2008; Berry, 2009b; Berry, 2013). Lack of recognition of customary tenure by formal systems of land administration makes customary tenure unregulated and open to abuse by chiefs and bureaucrats. Again, there are limited avenues opened to aggrieved customary tenure benefactors to gain access to justice and retribution.

3.2.1 Customary law

The indigenous law of ethnic groups in sub-Saharan Africa is customary law (Oba, 2011). Customary law is not written; it is orally transmitted from generation to generation. It derives its sources from the practices, norms, and traditions binding on the community. They are flexible, context specific and subject to change (Morapedi, 2010). It is not homogenous but change from community to community. However, the broad principles in customary laws are the same (Lund, 2008; Ndulo, 2011). Members of a particular community are expected to conduct their lives within the customary legal framework.

Colonisation and globalisation have had major effect on current customary laws (Meek, 1940; Wanitzek and Woodman, 2004; Berry, 1998; Ndulo, 2011; Oba, 2011). Customary law has been influenced by recent interaction with local custom, colonial rule and globalisation with its concomitant socio-economic and technological effects. Ndulo (2011) posits that "... present form customary law is distorted" (Ndulo, 2011: 88). Conversely, Wanitzek and Woodman, (2004) are of the view that "local living law, even if derived from ancient indigenous sources, need not be static, but rather be undergoing constant adaptation to meet new demands and interest and may develop by adopting concepts and devices from external sources" (Wanitzek and Woodman, 2004: 39).

The resultant effect of the external influences on customary law is pluralistic legal regimes, usually comprising of customary law, received law (common law or civil law depending on the colonial history), religious laws (where the area is predominantly dominated by Islam) and legislation (both colonial and post-independence legislation). Wanitzek and Woodman (2004) argue that law always exists in a state of legal pluralism. With legal plurality concepts and values from one law may lead to alteration or extension of other existing laws, or even the creation of new laws. Empirical evidence in this thesis clearly supports these claims.

3.2.2 Customary Institutions

Customary systems are embedded in complex social, economic, political and religious processes that order the life of its members. This section discusses customary land administration, traditional leadership and customary justice systems in relation to customary land tenure.

3.2.2.1 Customary land administration

Customary land administration is a flexible way of managing land relations for a specific community based on custom and prevailing traditions. Customary land administrators are able to adjust land right systems to current needs (Fitzpatrick, 2005; Arko-Adjei, 2011). Customary land administration usually provides secure tenure for its members and significantly reduces encroachment by outsiders.

Where the tenets of African worldview (see 4.3) are observed, land is administered by community leaders and family heads on behalf of the community. Leaders have to consult the community on major decisions such as alienation of land (da Rocha and Lodoh, 1999). Customary land tenure is relatively functional in such communities. In other areas, where struggles over land and entitlements are mingled with socio-political dynamics (Amanor, 2008; Berry, 2009b) customary tenure becomes dysfunctional.

3.2.2.2 *Traditional leadership*

There are many varieties of chiefs ranging from mere ceremonial heads to autocrats who are very powerful (Meek, 1940; Kyeremanten, 1971; Barrow and Roth, 1990). There are also chiefs who are considered embodiment of deity (Meek, 1940; Bamfo, 2000) and in recent times ‘development’ chiefs who may not belong to the royal family (Arko-Adjei, 2011). Chieftainship in the olden days was surrounded by innumerable taboos. Validity of divine chieftainship rests ultimately on the continued faith of the people (Meek, 1940).

The chief is usually the male head of the most powerful lineage or the head of the lineage who first settled in the area (Meek, 1940; Gluckman, 1969). Other lineage heads become the chief’s councillors. The individual owes allegiance first to his/her lineage head and then through the lineage head to the chief (Kyeremanten, 1971; Gluckman, 1969). The chief and his/her councillors are responsible for management of all aspects of the community including land allocation.

Chieftaincy was affected in many ways during the colonial period through indirect rule and subsequently by post-independence administrations (Meek, 1940; Bamfo, 1990; Crook, 2008, Berry, 2009a; 2009b; 2013). Chieftaincy, as an institution, was powerful for a very long time before the arrival of the colonial powers in many parts of Africa. During the colonial era and after independence, various governments gradually undermined the powers of chiefs. Despite this, chieftainship has not died out, but on the contrary, it has entrenched itself and in some places made substantial gains. Chiefs and traditional institutions have shown themselves to be indispensable and resilient in rural and peri-urban areas. The institution continues to be the centre of authority and symbol of unity in most customary areas in Africa, even in new

communities composed of heterogeneous people (Meek, 1940; Bamfo, 1990; Morapedi, 2010). Chieftaincy has become central to governance and cannot be discarded. It is an institution with immense clout and appeal, playing an indispensable role in customary land management, dispute resolution and preservation of cultural heritage (Morapedi, 2010).

The chief is the custodian of all land within his jurisdiction. He can dispose of unoccupied lands and when one of his subjects wants to transfer land, his/her consent must be sought (Ollennu, 1962; Kyeremanten, 1971; Delville, 2007). The chief and his elders may also give land to non-indigenous people for a fee or tribute. The chief, however, cannot deprive an indigene of his/her land rights in favour of a non-indigene (Ollennu, 1962). Asante (1965) asserts that the chief's position vis-a-vis stool land was that of a fiduciary. As the top executive functionary, he had authority to manage and administer the property, in the interest of his subjects.

Of late, the role of custodian has been abused by some chiefs (Kasanga and Kotey, 2001; Ubink, 2007, Ubink, 2008) as a result of rapid urbanisation and high demand for land. A number of chiefs are changing the use of farmlands into residential plots, especially in peri-urban areas, without any accountability for the proceeds of the sales, and in the process, they deprive poor indigenes of their land rights.

Berry (2009b) posits that in Ghana, the constitutional recognition of the authority of chiefs over stool lands has reinforced traditional hierarchies and lead to proliferation of formal and informal governing agents and institutions. This may disrupt or subvert open governance and sustainable resource use instead of helping to create sustainable development and democratization (Berry, 2009b). Amanor (2008) asserts that the empowerment of chiefs to control land enables them to transform and reinvent tenure systems in the interest of elites, for their own benefit. He associates chieftaincy with "the process of accumulation and the re-definition of tradition in support of accumulation" (Amanor, 2008: 77). Although chieftaincy may promote the process of decentralisation it may lead to uneven development (Amanor, 2008).

Ubink (2008) is of the view that chieftaincy has gained popularity in recent years due to the renewed interest shown in it by African governments, international institutions

and donor countries. Traditional authorities have been popular in recent times for several reasons.

The expectations of most Africans after independence were high. It was anticipated that the new political elites were going to deliver on their promises of socio-economic development (Kyed and Buur, 2005). The eruption of internal conflicts and civil wars in some states resulted in renewed interest in chieftainship. Interest in traditional authority also deepened in well-functioning states where there is elected multiparty democratic governance. Traditional leaders are seen as representatives of local interest groups (Ubink, 2008; Morapedi, 2010), who are more accessible to the local communities than elected state elites and therefore could take part in governance (Kyed and Buur, 2005). Finally, in some areas traditional authorities are seen as popular alternatives for dispute resolution, law enforcement and community development (Boafo, 2000; Arko-Adjei, 2011).

3.2.2.3 Customary justice systems

Customary dispute resolution operates outside the bounds of a formal state-based legal system. They are based on a system of customs, norms, and practices that are respected by members of a particular group for a long time and are considered mandatory (Harper, 2011). They draw their authority from customary beliefs rather than legal or political authority of the state (Ubink, 2008; Harper, 2011). Customary dispute resolution ensures socio-political order in the community. The rules and norms are actively produced and enforced through processes of participation and contestation. Customary laws are therefore dynamic, adaptable and flexible (Harper, 2011), and so any written versions are likely to be outdated quickly. Some factors that contribute to changes in customary laws are ecology, socio-economics, proximity to the formal system and religious beliefs (*ibid.*).

3.2.2.4 Characteristics of customary justice system

Harper (2011) argues that it is impossible to comprehensively define the nature of the customary legal system because i) governing rules and principles are not static but are evolving constantly to cultural interactions, demographic and socio-economic shifts, political processes and environmental change, and ii) they are unique to the communities in which they operate. However, despite the variations between and

within countries, provinces and communities, a number of common characteristics can be identified.

3.2.2.4.1 Restoration of social harmony

Customary justice systems operate in communities that are closely knit as a result of past and future economic and social relationships. Conflict disturbs and threatens these relationships and has the potential to disrupt social harmony. Disputes are therefore viewed as a matter concerning the entire community. Customary justice systems aim to restore intra-community harmony by repairing relationships between disputing people and creating a framework for integration. They do not guarantee the enjoyment of individual rights because the individual's right is subject to the community's right (see 4.3.2). Thus, unlike Western legal systems that aim at compensation and retribution for the individual or juristic person the primary goal of the customary justice system is to achieve reconciliation between parties divided by conflict and ensure peace in the community.

3.2.2.4.2 Hierarchy of problem solving forums

Customary justice system relies on a series of forums for solving conflicts. Depending on the magnitude of the dispute, a resolution committee may be drawn from members of the family or at the paramount chiefs' level. Adjudicators may include family heads, traditional leaders, religious leaders, and other people with specific experience like land surveyors. The adjudication committees are normally made up of males who are in high social standing and command respect in the community.

3.2.2.4.3 Dynamic and flexible operating modality

There are flexible rules and procedures. Norms are constantly being re-invented in response to social circumstances, economic realities and intra-community politics (Harper, 2011).

The dynamic structure allows for pragmatic solutions that suit local conditions and respond to the issue at the crux of the problem. The adverse side of this flexibility is lack of coherency and predictability as rules are applied differently to individuals in the same situation. Thus, resolution may be viewed as arbitrary or discriminatory. Rules and procedures are passed on orally rather than being recorded in writing. The

outcome of cases is also not generally recorded. Empirical evidence in some of the case study areas indicate that some formal recordings are taking place (see **Error! eference source not found.**).

3.2.2.4.4 Broad jurisdiction

Customary justice systems do not differentiate between criminal and civil offences. Wrongdoing in whatever form, interrupts social cohesion and must be checked.

3.2.2.4.5 Participation

In some customary dispute resolution systems, participation in dispute resolution is restricted based on gender, social status and ethnicity. In other contexts, dispute resolution is public and participatory. In such situations, disputants, witnesses and other stakeholders actively provide evidence and offer their opinions as to possible outcomes. Although this seems time consuming and laborious, it forms an integral part of the dispute resolution process. In this way the community discusses the action, shows why it is unacceptable and the offending party accepts his or her responsibility for the wrong action (Harper, 2011). Community involvement also enhances compliance on the decisions reached since enforcement of compliance, depends on the whole group through social pressure. It is therefore important that the outcome reached is acceptable to all.

3.2.2.4.6 Consensus-based decision making

The goal of restoring social harmony in customary justice systems demands that decisions should be acceptable to majority of community members; hence, the involvement of as many community members as feasible in the process. Even if customary justice system has structured procedures, outcomes relate more to perceptions of fairness and equity. Subjective notions of legitimate outcomes are judged within the specific circumstances. Customary law therefore provides a framework for deliberations rather than being determinative of an outcome. Customary justice systems focus on resolving the causal issue and preventing recurrence. A wider range of factors, such as the interpersonal relationships, previous transgressions and the power, status, and wealth of disputants may be taken into consideration than in common or civil law. Disputes are resolved on a case-by-case

basis to the ‘satisfaction’ of both parties and the community. Usually there are no lawyers, advocates nor standardised sanctions.

3.2.2.4.7 Reconciliation

To ensure that dispute resolution meets its objective of reconciling disputing parties, resolutions incorporate rituals of reconciliation or re-integration. In many customary societies wrongs are not only seen in terms of the actual injury or loss sustained, but also in terms of disregard for societal norms that ensure group harmony. Thus, compensating a person for their loss may not be enough to resolve conflict; the societal balance must also be restored.

The restoration of societal harmony is usually done by bringing the disputing families, the adjudicators and sometimes the whole community together in a feast, as a symbol to restore relationship. In most cases the perpetrator hosts the reconciliation ceremony or pays for the animal for consumption; “... a role that elevates them from dishonourable to honourable status” (Harper, 2011: 21). The ceremony represents a public apology by the offender to both the victims and the community for disturbing the peace. It also serves as a deterrent to others.

3.2.2.4.8 Constraints of customary justice systems

Customary justice systems are normally criticised for administering low standards of justice. Also, processes lack safeguards and leave society vulnerable to solutions that may be unjust, discriminatory and exclusionary (Harper, 2011; Ubink, 2008) and sometimes to punishments that are violent or barbaric such as banishment, ritual cleansing, forced marriage and the exchange of young women or girls as a resolution for a crime or compensation (Harper, 2011). The flexibility and adaptability of customary law could be employed to effect positive change in such areas rather than to use these grounds to dismiss customary justice systems with all their benefits. Good practices from other legal systems may be adopted to safeguard the protection of human rights.

3.2.2.5 *Reasons why customary justice systems are preferred*

Customary justice systems are a preferred resolution option for most users (Harper, 2011) because they are affordable, easily accessible, fast in dealing with cases and have comprehensible rules and procedures for the local communities (Crook, 2008).

3.2.3 *Strengths and weakness of customary tenure*

Customary tenure is flexible and adaptable to changing economic, technological, socio-political and demographic environments and so is very resilient. Customary tenure is a multi-layered relationship where no member of the community is excluded. Ownership is sourced in de-centralised concepts of kinship, welfare and identity. Alienation may have detrimental consequences to the cultural integrity and indigenous communities. The social, spiritual and cultural bond shared by the customary community imbues customary title with a distinctive and cohesive identity (Hepburn, 2006).

Some major drawbacks of customary tenure in the face of rapid urbanization and population growth are:

- lack of land records (le Meur, 2002; Arko-Adjei, 2011)
- fuzzy boundaries (le Meur, 2002; Arko-Adjei, 2011)
- lack of capacity on the part of some traditional leaders.

These shortfalls can be overcome by adapting good practices from formal land administration to improve customary tenure.

3.3 Historic customary tenure models

3.3.1 *Lugard's evolutionary land tenure model*

In the earliest days land and its produce were shared by the community as a whole (Lugard, 1965). Later, the produce became the property of the family or individual who produced it. The control of the land then vested in the head of the family. “[W]hen the tribal stage is reached, the control passes to the chief, who allots unoccupied land at will, but is not justified in dispossessing any family or person who is using the land” (Lugard, 1965: 280). With increased population and pressure on land, it gains exchange value and the conception of property rights emerges (Lugard, 1965). Sale, mortgage and lease of the land is then recognised (*ibid.*). Lugard (1965) argues that this process of natural evolution, which leads to individualisation, is present in every civilisation.

The Lugard model of land tenure is weak when applied to the current situation in Africa. It does not account for the various communities in sub-Saharan Africa that do not have recognised traditional leaders (chiefs), such as the Iboland in Nigeria where each village has a clan council (Meek 1940). He does not explain why the produce passes on from being in community ownership to family ownership.

3.3.2 Boserup's evolutionary land tenure model

Boserup (1965) proposed land tenure evolution based on rapid population growth, technological development and land use changes. She explored the role of population, as an independent variable that influences the development of agricultural technology and land use rights. She based her views on diverse economic and social theories and proposed that population growth induces change in the organization of labour which has an effect on the productive capacity of available resources (Marquette, 1997).

Boserup (1965), writing at a time of rapid population growth and technological change, extends population-induced change in the organization of labour to include population-induced change in technology, which also affects productive resources like land. She noticed a gradual change towards patterns of land use which made it possible to crop a given area of land more frequently than before the population growth (Boserup, 1965).

In describing this development, she states that small, sparsely distributed populations use 'fallow' to retain soil fertility. However, with increased population density, land is used more frequently and output is increased with the help of technological inputs such as fertilizer or irrigation so that the soil can retain its fertility within a shorter period. Thus, a sparse but growing population that had previously used long-fallow systems will gradually begin to use shorter-fallow on some of its land while keeping the remaining proportion devoted to traditional long-fallow. There is gradually a transition from shorter-fallow to annual cropping or annual cropping to multi-cropping of more than once a year on all of its land. This occurs with increased population growth. With intensive use, the same family or individual is confined to the same plot thus creating individualised tenure. This view seems to equate

ownership to use. It is, however, possible for ownership to be vested in the community and the user right vested in an individual.

3.3.3 Meek's African land tenure model

Meek (1946) observed that African land tenure systems were designed to meet the needs of a subsistence system of agriculture when population was sparse and land was in abundance. Land was held by a family or on community basis and only those who were members of the tribe, family or clan were qualified to hold land. The chief or traditional leader was the custodian of the land, while community members had usufructuary rights. The fact that the community owned the land meant nobody could alienate the land. Meek (1946) considered this "a hindrance to development" and "an impediment to progress". Similar sentiments have been echoed by governmental and international development policies (De Soto, 2000) over and over again often due to lack of holistic understanding of customary tenure.

Customary land tenure is not '*usufructuary*' (Gluckman, 1969; Woodman, 1996). Usufructuary grant was meant for the use of fruit during the owner's life time in Roman Law and it was not inheritable (*ibid.*). On the contrary, customary tenure is for perpetuity and can be passed on to heirs. It only reverts to the allodial owners in an unlikely event that a successor cannot be found.

Individualization of land is likely to be a product of colonization or commercialization, rather than as the product of evolutionary processes. However, considering individualization of land rights as part of an evolutionary process, or as an institutional innovation has enabled researchers and policymakers to understand better the trade-offs between efficiency and equity associated with the process. Also, identifying the factors that affect the evolution of customary land tenure institutions at the village and household levels has helped to identify critical points for policy intervention.

Private-property rights, however, cannot simply emerge spontaneously from a common-property system. Private-property rights depend upon the existence and enforcement of a set of rules that define who has a right to undertake which activities on their own initiative and how the returns from that activity are allocated (Ostrom &

Hess, 2008). In other words, rules and rulers are required to establish, monitor and enforce a property system. While some rules generate incentives that greatly increase the welfare of most participants in an economy, there are always individuals who resist changes because of benefits they receive from a prior system or propose changes that particularly benefit themselves. Rulers may also receive substantial returns for making rules that benefit some to the detriment of others (Ubink, 2008). Thus, rent seeking behaviour is expected on the part of both entrepreneurs and rulers.

3.4 Customary tenure reform theories

Policy on the manner that rights in land are recognised and regulated has been an on-going process in sub-Saharan Africa for some time now. Alden Wily (2000) asserts that within the 1990s most countries in Eastern and Southern Africa were undertaking some form of land reform; exceptions were countries undergoing civil conflicts. Some countries were promulgating new land tenure laws, while others were formulating new land policies. These reforms were necessary to correct colonially derived property laws, accelerate land delivery programmes, or to redress land losses due to racially discriminatory laws (Alden Wily, 2000; Moyo, 2007; Hall, 2007; Ntsebeza, 2007; Walker, 2007).

Walker (2007) has questioned the over-reliance on land reform to solve problems such as poverty, justice, food security, economic growth and redress for the landless poor. There is a limit to benefits of land reform. Besides, it is evidently clear that land reform is a slow process (Alden Wily, 2000; Moyo, 2007; Hall, 2007; Ntsebeza, 2007; Walker, 2007), especially when it has to do with customary tenure which has its roots in culture and religion of communities. Hall and Cliffe (2009) describe the South African Land Reform process as 'foundered'. The reform process has been described elsewhere as 'in crisis', 'at crossroads', 'at an impasse' or 'simply stuck' (Moyo, 2007; Hall, 2007; Ntsebeza, 2007; Hall and Cliffe, 2009). If South Africa, the economic giant in the sub-Saharan Africa, with all her infrastructure, is progressing at such a slow pace, then other countries in the sub region possibly cannot do any better. The rest of this section examines various customary tenure reform approaches.

3.4.1 *The replacement theory*

The replacement theory posits land markets as the foundation for economic development. It believes that the individual private property rights paradigm is the way to successful land management. Individualised private property, it is claimed, creates an avenue for increasing credit opportunities, land development and improvements and subsequently promotion of the land markets (Simpson, 1976; Coldham, 1979; Alden Wily, 2000). Functioning land registers are crucial to land markets. Land rights and transactions are recorded in the registers and references are made to them. Customary land tenure is inimical to land markets and modernization of the economy and therefore should be replaced (the “replacement” theory). Replacing customary tenure by individualised tenure is believed to be an effective way of dealing with land disputes, informal tenure arrangements, ‘unofficial land markets’ and litigations (Simpson, 1976; Coldham, 1979; Alden Wily, 2000).

Okoth-Ogendo (2000) is of the view that contempt for customary land tenure systems originates from ideological and historical assumptions. Ideologically, land is considered a commodity to be traded and historically, customary tenure is considered a stage in historical evolution of societies and that it will not stand the test of time. It is therefore not necessary to either acknowledge or develop it. “It is even thought that simply by enacting a new system of land law – usually based on Western property notions – customary land law would atrophy and disappear” (Okoth-Ogendo, 2000: 127).

Creating an efficient land market is the reason why most governments invest in land administration (Williamson *et al.*, 2010). Markets with the necessary infrastructure – tenure, value, use and development according to Williamson *et al.*, (2010) are able to deliver sustainable development. Land administration theory considers land markets as synonymous with land trading focusing on the activities of selling, buying, leasing, developing, raising credit and using capital in relations to land. Land markets may be formal, customary (informal), and some may be illegal (Williamson *et al.*, 2010). Formal land administration systems are planned to build effective land markets. Standard formalization involves creating infrastructure to manage processes of registration, planning, development, valuation and taxation. Although, these are expensive to create and maintain, and beyond the reach of the majority of urban

dwellers in sub-Saharan Africa, they are a crucial element of moving away from customary tenure to formal individualized systems of tenure. The required infrastructure makes formal tenure very expensive and beyond the reach of the urban majority who are poor (UN-HABITAT, 2008, Colin and Woodhouse, 2010). Customary land markets on the other hand permit simple land transactions that benefit the socio-cultural needs of the community as opposed to individualistic economic self-interest as supported by individual ownership. The benefits of customary tenure are in line with the new approach to prosperity that is holistic and integrated (UN-HABITAT, 2012).

Customary land markets may lack the infrastructure, used in developed countries, that gives public confidence and attracts participation of formal financial institutions in the trading process. However, they are built on social networks and that aspect gives security (Cotula, 2007). Formal financial institutions are profit-oriented and are therefore not interested in meeting the needs of the poor, who are mostly the beneficiaries of customary tenure. Financial institutions are interested in areas where they can maximize their profits. Focusing on land markets therefore, is a disadvantage to the majority of urban poor.

Evidence from sub-Saharan countries, like Ghana, that operate parallel tenure systems (formal and customary) indicates that the formal cannot compete with the customary partly because formal systems are based on different worldviews and social conditions. There is new perspective on customary tenure, “commonages” as open access with all its ills, as was perceived of customary tenure, has given way to legally registerable private (group) property (Alden Wily, 2000). UN-HABITAT (2012), advocates for a holistic and integrated approach to prosperity. This, they argue, “is essential to collective well-being and fulfilment of all” (UN-HABITAT, 2012: iv). Collective well-being is one of the basic tenets of customary tenure.

3.4.2 *Anti-market theory*

There are a number of countries, in sub-Saharan Africa, that have not adopted individualization of land. They opted for collective land tenure systems or cooperatives in which the agricultural production teams are in large units. In these nations, land were nationalised and redistributed (Putterman, 1985; Okoth-Ogendo,

2000; Juma *et al.*, 2004). Countries who undertook such reforms were informed by socialist ideologies. The nationalization policy enabled various government and parastatal bodies to be actively involved with all economic activities including agriculture, leaving very little room, if any, for private involvement. Examples are Tanzania (Ujamaa Villagisation Policy in Tanzania during the 1970s), Mozambique (the Mozambican village allotments in the 1990s) and Ethiopia (the Ethiopian land reforms in the 1970s) (Bruce and Migot-Adholla, 1994; Okoth-Ogendo, 2000; Juma *et al.*, 2004).

The replacement theory and the anti-market theory have a common objective: to replace customary tenure and its institutions either with individual ownership or with state ownership. Bernstein (2007) argues that neither free market nor planned (anti-market) economies are successful in their pure form. Governments need to intervene and enforce land rights. Besides, experience from the 1990s has shown that planned economies do not seem to be economically and socially sustainable (Bernstein (2007).

3.4.3 Tenure pluralism

In every jurisdiction, different types of tenure co-exist. Land tenure and property rights can be formal (freehold, leasehold, private or public rental), customary or religious and may include varying types of unauthorized/informal tenures (Akrofi, 2000; UN-HABITAT, 2008, UN- HABITAT, 2012). There are varying degrees of legality according to the local legislative framework and consequently, different bundles of rights to meet different needs. Tenure pluralism emanates from the realization that complete eradication of customary systems is almost impossible because, in many places, customary tenure still flourishes despite the sometimes-draconian statutory land laws promulgated by colonial and post-colonial governments to eliminate it (Barrow and Roth, 1990; Alden Wily, 2000; Arko-Adjei, 2011).

Countries that operate tenure pluralism normally use ‘western’ statutory tenure in urban areas, where it is managed by formal state institutions, while customary tenure is left for the rural areas under the management of traditional authorities. This model presumes that there is no duality in one location. However, there is a need to

promote multiple legal tenure regimes in peri-urban areas where different regimes meet. This need is pressing in Ghana and especially in peri-urban areas in Ghana, hence the selection of the case studies in peri-urban areas (see 5.2.3).

Critics of tenure pluralism mention conflicts that will ensue if different people claim rights to the same land under the different systems. This is seen to lead to complex legal, tenure and management uncertainties (Arko-Adjei, 2011). It is also argued that multiple institutional and legal structures will result in contradictions and insecurity regarding whose rights would be upheld and by which institution (Benjaminsen *et al.*, 2009; Toulmin, 2009). In response to these critics, tenure pluralism often leads to competition between tenure systems, and, like any free market operation, healthy competition may ultimately result in efficient land delivery. A close collaboration between the formal and customary institutions is expected to iron out some of the major differences.

3.4.4 Adaptation theory

Proponents of this theory admit that customary tenure is not only about property rights but has social, political and religious significance in the community. It is therefore not prudent to forcefully replace customary tenure with individualised tenure; it should rather be left to evolve with changing situations (Ault and Rutman, 1979; Bruce, 1988; Nkwae, 2006; Arko-Adjei, 2011).

Customary tenure has prevailed against all odds and it provides tenure for larger number of people in sub-Saharan Africa than all the other tenures put together. Alden Wily asserts "...despite a century of purposeful penetration by non-customary tenure ideology and legal provision, unregistered, customary tenure not only persists but is still by far the majority form of tenure in the region. None of the strategies adopted to ignore or diminish it have been successful" (Alden Wily, 2000: 2). Hence, the assertion of this research that customary tenure needs strengthening because it has its foundation in the African worldview and cannot easily be displaced (see 4.3). It may however, be improved by adapting best practices from other worldviews.

3.4.5 Innovation reform approaches to customary tenure

The flexibility of customary tenure has led to innovations in some areas. Although some of these innovations have been prompted by legislation, they still maintain some ingredients of customary tenure such as serving the needs of the poor, at least to some extent.

3.4.5.1 Land Boards in Botswana

Customary land in Botswana is allocated free to all indigenes. Each family is entitled to land for residential purposes, livestock grazing and arable farming. Families are given exclusive rights to residential and arable land and these rights are secure, inheritable and transferable. Customary land rights are for perpetuity. Grazing land is used communally by those who have livestock. Farmers are allowed to drill boreholes or open wells and have exclusive rights to such developments. Grazing areas are also used for other customary purposes such as cutting grass and collection of wood and wild fruits (Muthuba, 2003; Tembo and Simela, 2004). With a population of 2.031 million and a GDP of 17.33 billion (World Bank, 2013), one may argue that the government can afford to give land for free, however, other sub-Saharan African countries may be able to take similar steps and make land available to their populations at reasonable cost.

The post-independence government of Botswana saw the need to give urgent attention to the administration and management of customary land since it was the main source of livelihood for the majority of the population (Muthuba, 2003; Tembo and Simela, 2004). Laws, institutions and policies were formulated to improve the management of customary land (Muthuba, 2003; Tembo and Simela, 2004).

New institutions were established under the Tribal Land Act of 1968 for administering customary land (Frimpong, 1986). Land Boards were vested with rights and title to land in each tribal area (Muthuba, 2003; Tembo and Simeba, 2004; Cullis and Watson, 2005). By so doing, chiefs lost their control over land. The functions of the Land Boards with respect to land administration are land allocation, land registration, land use planning, land use monitoring, land acquisition and land adjudication (Tembo and Simela, 2004, Malatsi and Finnstrom, 2011). The Act also introduced leasehold in customary land. The Act was amended in 1993, to streamline

the duties and responsibilities of the Land Boards, create dispute resolutions mechanisms and to keep pace with social and economic changes (Muthuba, 2003; Tembo and Simela, 2004).

Cullis and Watson (2005) assert that the Botswana Land Boards have a reputation as a model of decentralised decision making over land but their power has become increasingly compromised from the mid-1980s and there is growing concern now that they have undermined community management systems. Tembo and Simela (2004) attributed failures to achieve their mandate to poor logistics and lack of qualified manpower. Among their shortfalls are inadequate record keeping, multiple sales, corruption and inefficiency (Home, 2010; Malatsi and Finnstrom, 2011). Thus the Land Boards may be guilty, like the Chiefs they came to replace, of keeping knowledge of allocation and positions of boundaries in their memories only (Malatsi and Finnstrom, 2011). The Government of Botswana has initiated a five-year collaborative project called LAPCAS (Improvement of Land Administration Procedures, Capacity and Systems) with her development partners to improve the situation (Malatsi and Finnstrom, 2011).

Lessons from the Land Boards indicate that whatever the institutional setup for land management, principles of good governance should be adhered to (see 3.5). Resources (technical, financial and human) should be made available for efficient monitoring and evaluation with the active participation of all stakeholders.

3.4.5.2 Starter and Landhold Titles in Namibia

Namibia, like some sub-Saharan Africa countries, has multiple land tenure systems as a result of colonial influence: freehold in urban areas and customary tenure in the rural areas. Rapid urbanisation after independence and the freedom of movement exposed the ineffectiveness of the conventional formal urban land delivery. The use of professionals in processes such as planning, surveying and registration was found to be a limiting factor since their numbers were inadequate to meet the growing urban tenure delivery needs. The resulting effect was the creation of informal developments (Christensen, 2005). To address the situation, the Government of Namibia adopted an affordable land registration system called the “Flexible Land

Tenure System (FLTS)” particularly designed to benefit poor informal urban dwellers taking into consideration social, cultural and economic circumstances.

Christensen (2005) identified the following problems in Namibia which necessitated the introduction of FLTS:

- Freehold title was restricted to some areas. The remaining communal lands were under various tenure arrangements, ranging from individual rights to residential and arable land, communal and grazing rights.
- Black Namibians were unable to obtain freehold title to land because of the apartheid policy before independence.
- After independence in 1990, residential plots were to be subdivided, serviced and sold to the public under freehold title.
- Land management conflicts between local authorities and the headmen/women responsible for managing customary land.
- Mounting compensation claims for relocation.
- High demand for serviced land.
- Dead slow formal urban land delivery.
- Lack of land related professionals.

The FLTS aims at addressing urban land needs for all Namibians. It focuses on providing land rights and security of tenure for people living in urban informal settlements. The new system offers two different levels of tenure: starter and landhold titles.

3.4.5.2.1 Starter Title

A ‘starter title’ is an individual type of tenure in which one person, as custodian for family or household, is allocated a right to an unspecified site within a specific block. The block is registered in the name of a group. Starter title has no spatial extent except the block boundaries. The outer perimeter is surveyed and registered to protect the group against loss of tenure by government or other land grabbing (Christensen *et al.*, 1999). Informal parcels within the block are not surveyed.

Individuals within the block must abide by community rules that they set for themselves. Ownership of the block may be held by a government body, private developer or community organisation. Starter title holders are given temporary locations and guaranteed a specified location within the block after the final survey and setting out of basic infrastructure. This is undertaken when members of the block decide to upgrade their tenure to landhold tenure or freehold.

Starter title can be sold, donated and inherited, subject to restrictions agreed upon by the group. The number of informal residents within a block is limited so as to avoid overcrowding during upgrading. For the same reason it is impossible for such tenure to be encumbered by mortgage or lease. No permanent structures are allowed until infrastructure provision is complete. In Namibia, starter titles are registered locally and a copy of the information is kept at the National Registry (Christensen, 2005).

3.4.5.2.2 Landhold Title

Landhold title is a statutory tenure which is an improvement on Starter Title in Namibia. It is issued in relation to a specific site within the block. With landhold title, the owner can develop a permanent structure and, in case the state needs the site for a public purpose, the owner is entitled to compensation in accordance with applicable expropriation laws.

Paraprofessionals are used in all the processes making it more affordable to many more people than can afford the formal system. Landhold titles are registered digitally in a local deeds registry and copies are deposited at the Windhoek Deeds Registry Office.

A landhold title can be sold, donated and inherited. It is subject to changes in matrimonial regimes. In contrast to the starter title, it is capable of being mortgaged and sold in execution (Christensen *et al.*, 1999).

Unlike freehold and registered leasehold, the block system for starter or landhold titles are less costly and more affordable to informal communities and local authorities. They also address the technical and financial resource problems found in land management, and more importantly, they are socially acceptable to customary

tenure practices. They can satisfy “*lower order tenure*” security needs, protect people from eviction, and give occupants secure inheritance rights.

Although the concept of starter and landhold titles are good innovations, they are envisaged as starting points in an evolutionary tenure ladder and not a system of tenure regimes in their own right. Society may therefore not give these tenures the necessary recognition that they deserve.

3.5 Good governance in customary land administration

Governance is the manner in which power is exercised by government in managing a country’s social, economic and spatial resources (Williamson *et al.*, 2010). Government is only one actor in governance (*ibid.*). The concept involves formal and informal actors involved in decision making and implementation (*ibid.*).

Kaufmann *et al.* (2007), writing for the World Bank, defined ‘good governance’ as encompassing the political regime: how authority is exercised in the management of a country’s economic and social resources for development and the capacity of governments to design, formulate and implement policies and discharge functions. Similarly, the Food and Agriculture Organisation (FAO), defines governance as “the way in which society is managed and how the competing priorities and interests of different groups are reconciled. It includes the formal institutions of government but also informal arrangements” (FAO, 2007: 5).

From whatever angle good governance is viewed, it encompasses, among other things, respect for fundamental human rights, political pluralism, rule of law, transparent and accountable processes and institutions, predictability, responsiveness, effective participation, public-private partnerships, an efficient and effective public sector, legitimacy, access to knowledge and information, the political empowerment of people, equity, sustainability, and attitudes and values that foster responsibility, solidarity and tolerance (Kaufmann *et al.*, 2007; UN-ESCAP, 2009).

Traditional leaders are important actors in governance of customary tenure. In recent times, due to economic pressures and love of power or self-enrichment, some

chiefs have become autocratic (Ubink, 2007; Ubink, 2008). This requires vigilance by the communities they govern in order to ensure that chiefs do not abuse their powers, especially those of land management. Prudent land governance by customary leaders is essential to manage land, the single greatest resource of a community.

Bad land governance creates insecurity in customary rights and results in corruption and bribery. Poor farmers, women, youth and other vulnerable groups suffer as a result of bad governance (Arko-Adjei, 2011). It leads to weak institutional frameworks, lack of accountability, lack of transparency and other such vices (Burns, 2007; FAO, 2007; Kaufmann *et al.*, 2007; UN-HABITAT, 2007). In customary systems, bad governance manifests itself in the manipulation of customary law, the abuse of power by chiefs, lack of transparency in land allocations, forced evictions, land grabbing by the rich and powerful, loss of women's land rights, and increased land litigation (Toulmin and Quan, 2000; Kasanga and Kotey, 2001; Ubink, 2008; Joireman, 2011).

Good land governance is crucial for sustainable development. It underpins efficient land delivery, protects the livelihood of vulnerable groups, encourages private sector investment, and enhances local government accountability (Deininger *et al.*, 2010). Clear and transparent rules, efficient land delivery processes, accessible land information are essential to reduce corruption and improve tenure security. There is then the potential to positively affect the life of the poor and subsequently lead to the achievement of sustainable development goals.

3.5.1 Good governance assessment criteria

Governance indicators can be categorised as either 'rule-based' or 'outcome-based' (Kaufmann and Kraay, 2008). Rule-based indicators are used to assess whether the institutions associated with good governance are indeed in place, while outcome-based indicators assess citizen perceptions, and the extent to which users feel that public institutions are accessible and responsive to their needs (Deininger *et al.*, 2010).

Various indicators are used to address governance in land tenure and administration including the World Bank Governance and Doing Business Index by Kaufmann *et al.* (2007), the UN-HABITAT governance indicators (UNHS and Transparency International 2004; UN-HABITAT, 2007), the FAO's indicators on good governance in land tenure and administration (FAO, 2007), and the World Bank and FAO's indicators of the success of land administration reform (Burns, 2007). These organisations emphasise the role played by state structures in ensuring good governance. Since, in customary areas, traditional leaders are responsible for land management; these indicators will be adapted and used to assess good governance in customary land administration (see 3.2.2.1. Several indicators are used by these institutions, however the following are the most appropriate for traditional land good governance and are discussed briefly.

3.5.1.1 Efficiency and effectiveness

Efficiency and effectiveness are vital ingredients for land administration (Williamson *et al.*, 2010; Arko-Adjei, 2011). They feature prominently in new theoretical framework for sustainable land administration. Procedures for land allocation and conflict resolution should be clear and effective. Procedures should be simple and clear without any ambiguities (FAO, 2007).

3.5.1.2 Transparency

Principles, policies and processes should be available to all stakeholders. Transparency is to be built on the principle of free information flow between stakeholders (Kaufmann *et al.*, 2007), so that abuse of office can easily be exposed.

3.5.1.3 Accountability

Accountability is a hallmark of a good steward. It is closely related to transparency in that both concepts emphasise the need for institutions to be open to their clients in all their activities. Accountability can reduce bribery and corruption which is rampant in some traditional areas (FAO, 2007; Ubink, 2008). Accountable traditional authorities responsible for land delivery will account for their stewardship to community members, respond to their queries, explain their actions and provide evidence of their performance (FAO, 2007)

3.5.1.4 Equity and fairness

Equity and fairness in customary land delivery should be distributional and intergenerational (Curry, 2001). Distributional equity implies all stakeholders should have a say in decision making and benefits to be derived from land rights. There should be equal access to information, equal standards of service and no discriminatory practices in accessing land (Kaufmann *et al.*, 2007; Zakout *et al.*, 2007). Intergenerational equity requires that the present generation use land sustainably so that future generations are not denied such resources. This is in line with the African concept of land.

3.5.1.5 Participation

Participation involves consultation, cooperation and collaboration and interactive way of decision making. It flourishes where there is freedom of association, equity and where people are free to express themselves without fear of intimidation (Kaufmann *et al.*, 2007). The WHO Regional Office for Europe (2002, 10) defined community participation as:

“a process by which people are enabled to become actively and genuinely involved in defining the issues of concern to them, in making decisions about factors that affect their lives, in formulating and implementing policies, in planning, developing and delivering services and in taking action to achieve change” (WHO Regional Office for Europe, 2002: 10 as cited in Heritage and Dooris, 2009).

Community participation in customary land delivery can reduce conflicts, improve accountability, ensure efficient customary land management and boost investor confidence in customary tenure. It can ensure that traditional leaders (custodians of customary land), indigenes, land right holders, land professionals and government officials and institutions collaborate for the benefit of all (Arko-Adjei, 2011).

3.5.1.6 Integrity

There is a naïve view that morally acceptable behaviour is an innate quality of leaders by virtue of their status (Storr, 2004). This conception attracts the risk of exploitation and abuse. Ubink (2008) observed that as competition for land intensifies, the flexibility offered by customary tenure could easily be abused. Evidence abounds in literature of indigenes and other vulnerable groups who lost

their land rights (Kasanga and Kotey, 2001; Kasanga, 2008; Ubink, 2008). Consequently, integrity is a vital element of a functional customary system. Leaders with integrity will respect and abide by customary laws and procedures, they will be fair, accountable, respect the views of the community, and therefore command the respect of the community.

3.5.1.7 *Stable administration*

Feng (1997) observed that stable administration (relies on political stability) has a positive indirect effect upon economic growth by inhibiting regime interruption and enhancing system adjustability. Meek (1940), reports of a number of chiefs being destooled (removed from office) in the Gold Coast (now Ghana) because of mismanagement of land resources and revenue. In the absence of a stable traditional administration, land allocation becomes chaotic (Ubink, 2008). Stable traditional administration is a pre-requisite for good governance in traditional land administration.

3.5.1.8 *Cost*

Customary tenure is the most affordable land tenure in peri-urban areas (Kasanga, 2008; Alden Wiley, 2008). Whittal (2011) however, argues that cost is linked to equity and accessibility, therefore all aspects of cost regarding land allocation should be made available to all. There should be no hidden cost. Such as extra payments for Allocation Notes, site plans and other services that are part of the delivery process (Akrofi and Whittal, 2011b).

3.5.1.9 *Affordability*

Although customary land is cheaper than formal land, it is not affordable to some indigenous poor (Kasanga and Kotei, 2001; Akrofi and Whittal, 2011b). They may lose their land rights because of urbanization at the urban periphery and therefore have no means of sustenance. There should be a special concession for poor indigenes so that they can also meet their basic human right for shelter.

3.6 Chapter summary

To Africans who believe in customary tenure, humankind and land are inseparable. Land is a precious gift for the present generation to be conserved for future generation. Consequently, land may not be sold but to be used judiciously.

Customary tenure is robust, flexible and adapts to changing socio-economic conditions. These qualities have kept customary tenure active over the years despite the numerous attempts to eradicate it. It has survived colonisation, rapid population growth and urbanisation. To continue to stand the test of time, however, customary land management should adapt to the changing needs of society, particularly in relation to human rights and the need for land tenure for families and communities. It should adopt the tenets of good governance in land administration and where necessary adapt practices and technologies from the formal systems to enhance its performance.

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4 THEORETICAL FRAMEWORKS FOR RESEARCHING PERI-URBAN CUSTOMARY TENURE AND LAND ADMINISTRATION

4.1 Introduction

The previous chapter reviewed theory on customary tenure. This chapter identifies a suitable theoretical framework for this research. Various worldviews are investigated, especially the African worldview which is the foundation on which the concept of customary tenure rests. Research on customary tenure from an African worldview appears to be novel.

The chapter identifies a suitable paradigm for the research as well as, the case study strategy and mixed methodology. The chapter ends with an assessment of basic theories of modernisation and development, and whether these impede development in customary tenure regimes.

4.2 Worldviews

Worldview has been defined as the means by which we “find our way through the social landscape surrounding us” (Valk, 2009: 70). According to Calvalho IV (2006), worldview is a belief system concerning the nature of reality and how one acts as a subject in reality. It is the “frameworks of larger meaning” and “maps of the mind” which battle for our hearts and define “who we are as human beings” (Lappé and Lappé, 2003:9-10 as cited by Valk, 2009: 70). Different terminologies such as “frame of orientation,” *Weltanschauung*, “plausibility structures,” “great unifying systems” and “visions of life” are used to denote worldview in literature (Valk, 2009). People are strongly influenced by their worldviews. Thinking, beliefs and convictions are all rooted in worldview, be it religious or secular. Worldview-traditions predominantly orient or ground people communally or individually. Worldview is not only a “way of life”, it also informs “visions of life” because humans live their lives based on their beliefs and values (Valk, 2009). This, in a way, may explain the resilience of customary tenure in the face of the challenges discussed in Chapter 2. The worldview of customary tenure is quite different from the worldview of individualised tenure, which often replaces it.

Scientific worldview is different from philosophical worldview in that, science finds its truths using methods, procedures and sources different from those of philosophy. However, Calvalho IV (2006) argues that scientific worldviews always contain essential underlying tenets that are more philosophical than scientific.

The concept of African worldview may not be universal or exclusively held by all Africans. It is also influenced by many complex personal, family, socio-cultural and historical factors including Eurocentric thinking. However, the African worldview needs to be considered when thinking about land in Africa, particularly customary land.

Critics of African worldview challenge the notion that a particular group has a worldview (Okafor, 1996). Ohaegbulam explains that although Africans share some common aspirations, hopes, values, and even, death and thoughts of life after death with other races, “their experience - the totality of the events and facts that make up their life and conscious past - is in many respects unique and clearly distinguishable from those of the other segments of humanity (Ohaegbulam, 1990: 22). Hence, the African worldview in customary land administration is crucial for sustainability.

4.3 African worldview

African worldview distinguishes three phases of selfhood in the human life cycle (Nsamenang, 2006). The spiritual selfhood begins at conception, or perhaps earlier in an ancestral spirit that reincarnates and ends with the naming ceremony of a new born child. A social or experiential selfhood follows from the rite of incorporation or introduction of the child into the human community through naming and ends with biological death preferably at an old age. The cycle is completed with ancestral selfhood which follows biological death (Nsamenang, 2006). Some African cultures believe in the rebirth or reincarnation of loving ancestors which then completes the unbroken circle of being human (Zimba, 2002). Okafor (1996) asserts that African worldview hinges on: the centrality of community, respect for tradition, high level of spirituality and ethical concern, harmony with nature, sociality of selfhood, veneration of ancestors and unity of being.

Chike (2008) identifies three major features of African worldview:

- Centrality of religion or spirituality
- High regard for community, and
- Concept of time.

He observes that, despite many years of infiltration of other religions and philosophical thoughts, these remain fundamental.

4.3.1 *Spirituality or religion*

Traditionally, Africans perceive the universe in spiritual terms (Mbiti, 1969; Nsamenang, 2006; Chike, 2008; Eze, 2008). There is no distinction between “the material” and “the spiritual”. These are interwoven “... the spiritual universe is a unit with the physical, and that the two intermingle and dovetail into each other so much that it is not easy, or even necessary, at times to draw the distinction or separate them” (Mbiti, 1969:74 as cited by Chike, 2008: 223).

Although Africans believe in a Supreme Being and other lesser gods (Chike, 2008), relationship with the recent dead is very intimate because the spirit world is understood to be resident among the living (Chike, 2008). The ancestral spirits are near to human beings – they are part of the community, unlike the Supreme God and other deities.

The implication of this on customary tenure is enormous. From this worldview, land is for the living and the dead. The chief who is a living ancestor (Kyeremanten, 1971) or the earthpriest (Lund, 2008) manages the land on the community’s behalf. Land should not be sold without reference to the community. The authority of spiritual beings is used to police the life of the living, including their dealings in land.

4.3.2 *African communitarianism (Ubuntu)*

With the African worldview, a sense of self cannot be detached from the community of other humans in terms of being interconnected and enacting one’s social roles (Nsamenang, 2006). This ideology is inculcated in the child right from infancy. “The social ontogenetic paradigm is premised not on an independent or autonomous

frame; its foundational principle is an interdependent or relational script” (Nsamenang, 2006:295). Nsamenang argues that the conceptualization of human ontogenesis of the African, differs in theoretical focus from the more individualistic accounts proposed by the Western worldview. Thus the African worldview of communal living is part of the African child’s upbringing and it becomes part and parcel of their self-concept, and therefore difficult to depart from. This may help to explain the recurrence of customary tenure even when draconian laws seek to eliminate it.

There are two schools of thought concerning African communitarianism in the literature. Both schools of thought agree with the discursive formation of the individual’s subjectivity by the community (Wiredu, 1998; Chike, 2008; Eze, 2008). The point of contention is which of the identities - individual or community supersede the other. In traditional life, the individual does not and cannot exist alone except corporately. The individual owns his existence to other people both past and present members of the community. The individual is simply part of the ‘whole’. Whatever happens to the individual happens to the community and vice versa (Dzobo, 1992). Eze (2008) argues that the identities are mutually constitutive and hence none is supreme. The community’s and individual’s welfare are interwoven (see 2.5.3). Community’s decisions are reached through lengthy discussions and consensus so as to serve the interest of all (Eze, 2008; Wiredu, 1998).

4.3.3 African concept of time

The renowned African philosopher, Mbiti (1969), argues that for traditional Africans, the concept of time is not an abstract or linear form. It is a recollection of events stretching from the past into the present but not going far into the future. Time consists of events which have occurred; which are occurring and those which are inevitable or immediately about to occur (Mbiti, 1990; Kalumba, 2005; Chike, 2006; English, 2006). Thus, the Western concept of time: indefinite past, present and infinite future is alien to Africans (Mbiti, 1969). The future is absent because events which lie in the future have not occurred, they have not been realised and therefore do not constitute time.

The day is reckoned by its significant events (*ibid*). These events are made by people or affect people if they are naturally induced. Time therefore is space filled with people where human relationships are the controlling factors in all that happens (Mbiti, 1969; Mbiti, 1990). Russell (2003) notes that unknown to Mbiti, Zahan (1970, second edition) had arrived at similar conclusions ten years earlier in the first edition of his book. Their findings about African view of time (Mbiti, 1969; Russell, 2003; Kalumba, 2005; and English, 2006) can be summarized as

- Africans are moving backwards in time towards the past; oriented towards the world of their ancestors
- The notion of time is inseparable from that of the dead who are real people in the next world
- Time is relational. Events in this world stand in relation to those who have gone before, especially immediate relatives
- There are various forms of interaction between the living and the dead.

Africans are tied to land because it is a concrete expression of both their past and future. The land provides them with their roots of existence and also binds them mystically to their departed (Mbiti, 1969). Fisiy (1992), writing on Cameroon, asserts that the holistic perception of land is common to most communities in Africa. He quotes Jomo Kenyatta as saying that the earth is the most sacred thing above all that dwell on it, and that an *everlasting* oath is to swear by the earth. This is because the soil feeds the child throughout his life and after death nurses the spirit of the dead for eternity.

These concepts have huge implications on land right holding, particularly on customary landholding and alienation. They also have a strong influence on the duration of tenure. Use rights are considered more important than the type of land tenure such as customary freehold and share cropping.

4.4 Ontology and Epistemology

Ontology is the science of reality –‘what is’. It deals with the classification of entities and the questions of identity. Winter (2001) states that, ontology relates to what exists *a priori* to perception, knowledge or language. She distinguishes

between reality-based ontology and epistemological ontology which describes human conceptualizations of reality. Epistemology is the philosophy of knowledge or how we come to know. Epistemology is closely related to ontology and methodology. Ontology involves the philosophy of reality while epistemology addresses how we come to know 'reality' and methodology identifies the particular practices used to attain knowledge of reality (Krauss, 2005).

Historically, epistemological knowledge of cadastral systems had been based on experimental research design. The situation has changed of late due to the realisation that cadastral systems not only deal with setting out of boundaries and production of maps, but also deal with complex ownership and security of tenure issues (Durand-Lasserve and Selod, 2007; Augustinus *et al*, 2006; Williamson, 2010). This new understanding of reality in cadastral systems has led to the use of tools from social sciences for data collection, analysis and different logics of generalisation (Çagdas and Stubkjaer, 2009). A critique of different paradigms used in cadastral systems follows.

4.4.1 A critique of positivism

Positivist ontology is based on naive realism (Denzin and Lincoln, 1998). The positivist attempts to discern natural laws through direct manipulation and measurement. Deductive logic is used to postulate theories that can be tested through empirical methods. Positivism insists that any field of study, in order to qualify as scientific, must be nomothetic and therefore work towards discovering universal or general laws. It also asserts that there is an objective reality that is independent of the researcher (Susman and Evered, 1978; Pelto and Pelto, 1978; Gary, 2004).

Empiricism is similar to positivism. It assumes that our knowledge of the world can be derived from 'the facts of experience' (Willig, 2001). Sense perception is the basis for knowledge acquisition, through the systematic collection and classification of observations. Simple observations are put together to give rise to more complex ideas, from which theories are developed. Thus, theories are constructed to make sense of the data collected through observation.

The epistemology of positivism is dualist and objectivist – the observer and the observed are independent. The values and biases of the researcher are controlled to ensure objectivity. Replication is possible under similar conditions. Positivism lends itself to experimental and manipulative methodologies in which propositions are stated then tested to prove or reject theory (Pelto and Pelto, 1978; Whittal, 2008). It uses systematic and objective procedures that are logical. Theories that are proven are then generalized to similar cases outside the sample, while those that fail are rejected (Whittal, 2008).

Positivist ontology and epistemology has been critiqued on several fronts. Susman and Evered (1978) argue that by limiting the methods to value-free, logical, and empirical, the positivist models of science may undermine organizational values of members when applied to organisations. The reductionist approach limits generalization to similarly stripped problems (Mingers, 2006). However, most research problems result from human actions, which are value laden. Consequently, solutions that do not take cognisance of human values are not viable. Denzin and Lincoln (1998) assert that positivism is generally no longer acceptable on its own in the social sciences. Customary tenure research is characterised by complex relationships between people and the land and positivism alone is therefore inadequate for research in this area.

4.4.2 A critique of postpositivism

The ontology for postpositivism is critical realism. It is understood that there is a ‘real’ reality but it is only imperfectly apprehensible. This is because of the limitations in human intellectual mechanisms (Guba and Lincoln, 1998).

In contrast with the positivist emphasis on empirical truth, postpositivism holds the view that scientific and common sense reasoning are the same process (Gary 2004; Lincoln and Guba, 2000). Positivists follow specific procedures to ensure that observations are verifiable, accurate and consistent. In contrast, postpositivists understand that there is more to be known than can be conclusively established through empirical data. Knowledge is conjectural and absolute truth can never be totally discovered. Evidence established in research is imperfect, fallible, and based on theoretical assumptions rooted in social traditions - the conceptual lenses through

which the world is perceived. Thus, science, like all human knowledge, is grounded in and shaped by the normative assumptions and social meanings of the world it explores. It is for this reason that researchers state that they do not prove a hypothesis, instead, they indicate a failure to reject the hypothesis (Whittal, 2008; Barry and Roux, 2012). They aim to prove a theory incorrect (falsification). When this fails, the theory is assumed correct. Postpositivism could be useful in exploring aspects of customary tenure.

4.4.3 A critique of interpretivism/ constructivism

Interpretivist ontology is based on relativism (Guba and Lincoln, 1998). That is, reality cannot be determined objectively but it is socially constructed (Gary, 2004). Realities exist in the form of multiple mental constructs, based on specific local conditions and social experiences of the observed or observer.

Interpretive researchers study meaningful social action and gather large quantities of detailed qualitative data to acquire an in-depth understanding of how meaning is created in everyday life in the real world (Guba and Lincoln, 1998; Gary, 2004). Theories are usually formed using inductive logic. Thus, people in a society understand the activities in their social context better than any researcher would. Hence, interpretivism promotes the value of qualitative data in pursuit of knowledge. However, while interpretive research is recognised for its value in providing contextual depth, results are often criticised in terms of validity, reliability and the ability to generalise findings. Interpretivism should be useful in customary land research to understand the perception of customary right holders and administrators. Interpretivism alone, however, is not suitable for this research since it has the potential to ignore the more tangible material/technical aspects, or to ascribe too much importance to bias in the process of modelling real entities and relationships.

4.4.4 Structuralism

Structuralism is generally rejected in science due to its understanding of structures as more important than the function and the role of humans and more elemental than culture, behaviour, and experience (Sun, 2011). Structuralism is not desirable on its own for customary tenure research since customary rules and laws are not universal

but locally determined, and customary tenure research is not limited to the reductionism to underlying structures promoted by structuralism.

4.4.5 Poststructuralism

Poststructuralism claims that there is no absolute truth. It stresses discontinuity, plurality, heterogeneity, openness and innovation. The world, according to poststructuralism, is fragmentary and determined by local rules. It rejects any standard model of foundation, objectivity, truth, systems, and certainty (Sun, 2011). The frameworks of systems as in structuralism are merely fictitious constructs that cannot be trusted to develop meaning or give order. Also, language systems cannot be trusted to convey truth. Race, class and gender are constructs and therefore are incapable of decisively validating conceptions of justice and truth (ibid.). Individual intentions are considered constructs within a social reality.

Poststructuralism emphasizes social explanations of individual practices and experiences. It insists on universal neutral perspective; less epistemology, metaphysics and ethics. There are elements in customary systems that are real and objective and therefore poststructuralism is rejected as the theoretical base of customary tenure research on its own. However, there are aspects of poststructuralism that align well with African communitarianism (see **Error! eference source not found.**).

4.4.6 Postmodernism

Postmodernism rejects the notion of progression of knowledge through time in favour of a situational understanding of knowledge. It argues that theories provide partial perspective of their objects and that the researcher is not detached from the world. Knowledge is historically and linguistically influenced (Sun, 2011). The basic tenet of postmodernism pertains to indeterminacy and constant deconstruction or reconstruction. Postmodernism posits that everything is temporary and relative. There are no universal laws hence no framework against which things can be compared and judged better or worse (Jackson, 2003). Postmodernism is therefore difficult to use in critique and is not adopted for this research.

4.4.7 Advocacy and participatory worldview

Proponents of advocacy and participatory world view, assert that research inquiry needs to be intertwined with politics and political agendas so as to address issues like empowerment, inequality, oppression, alienation and others (Creswell, 2008). This is because postpositivism assumptions and structural laws and theories do not address marginalised individuals in the society nor do they address the goal of social justice (*ibid.*). Advocacy/participatory research often begin with an important issue or stance about a problem in the society, such as the need for empowerment. It is executed in collaboration with the community from the design of questions, data collection, analysis and the end result, which is the anticipated improvement in the chosen social, economic or political condition. The use of advocacy participatory worldview is time-consuming but useful for action research. This research does not require an advocacy/participatory paradigm to address the research questions, neither is it action research. For these reasons, this worldview is not suitable.

4.4.8 Pragmatic worldview

The pragmatic worldview assumes that knowledge is created through action and interaction of self-reflecting beings (Creswell 2008). The envisioned end of the action affects the reaction taken. This reaction may be altered in midstream as the reactor assesses its effectiveness. Past memories and recollections also have a bearing on the actions. Pragmatists believe in the accumulation of collective knowledge gained through common experience and mutual understanding through recognition, interpretation and action (Ray, 2010). New knowledge (natural sciences) is provisional until checked out empirically by peers. Knowledge to a pragmatist is useful for practice or practical action. Pragmatism is not aligned to any particular system of philosophy and reality. It applies mixed methods and draws from both quantitative and qualitative assumptions. Truth is what works at a particular time. Reality is independent of the mind and at the same time it is lodged in the mind (Creswell, 2008).

The ontological basis of the pragmatic approach is that the external world is a symbolic representation of a symbolic universe. Human action is creative, humans have situational freedom and they adapt their actions to specific situational problems (Ray, 2010).

Jackson (1997) argues that pragmatism is dangerous in the social domain because it can lead to costly mistakes that can be avoided by theoretical understanding. Since customary tenure has important social as well as natural aspects, pure pragmatism is not suitable.

4.4.9 Critical realism

Critical realism is a well-developed philosophy of science (Brown *et al.*, 2002). It is a philosophical paradigm that has elements of both positivism and interpretivism. While positivism concerns itself with a single, concrete reality and interpretivism understands multiple realities, critical realism concerns multiple perceptions about a single, reality (Krauss, 2005). The concept of reality is understood to extend beyond the self or consciousness and it is not fully discoverable or knowable. Research in positivism is value-free, and that of interpretivism is value-laden (Guba and Lincoln, 1998), while critical realism acknowledges differences between reality and people's perceptions of the reality (Krauss, 2005). Knowledge of reality is a result of social conditioning and therefore cannot be understood independently of the social actors involved in its derivation (Guba and Lincoln, 1998; Dobson, 2002; Krauss, 2005; Whittal, 2008). It is believed that reality is a product of the process of knowledge derivation. "The critical realist asserts that real objects are subject to value laden observation; the reality and the value-laden observation of reality operates in two different dimensions, one intransitive and relatively enduring; the other transitive and changing" (Krauss, 2005:762).

Conceptualizing of the real world is often achieved through a systems model (Whittal, 2008). It acknowledges that positivism and interpretivism both contribute to an understanding of reality, and that neither hard nor soft systems thinking (Jackson, 2003) should be favoured, instead they should be combined.

Critical realism includes social structures and processes as part of reality, even though they are socially constructed. Although they are not natural and immutable they are real, a virtual or historical reality shaped by a combination of social, political, ethnic, cultural, economic and gender factors (Denzin and Lincoln, 1998). Thus, critical realism maintains a view of the reality of the world. It accepts that knowledge of this reality is socially and historically influenced (Whittal, 2008;

Harre, 2009). It posits that the real world contains objects and structures, which are causally active and may result in events/perturbations, which can be measured or perceived in the human realm (Figure 4-1). However, knowledge of these real objects and structures cannot be fully accessed due to limitations of human intellectual mechanisms and our ability to perceive these phenomena (Whittal, 2008; Harre, 2009). Consequently, claims of critical realism must be subjected to wide criticism to ensure that the truth is approximated as best as possible.

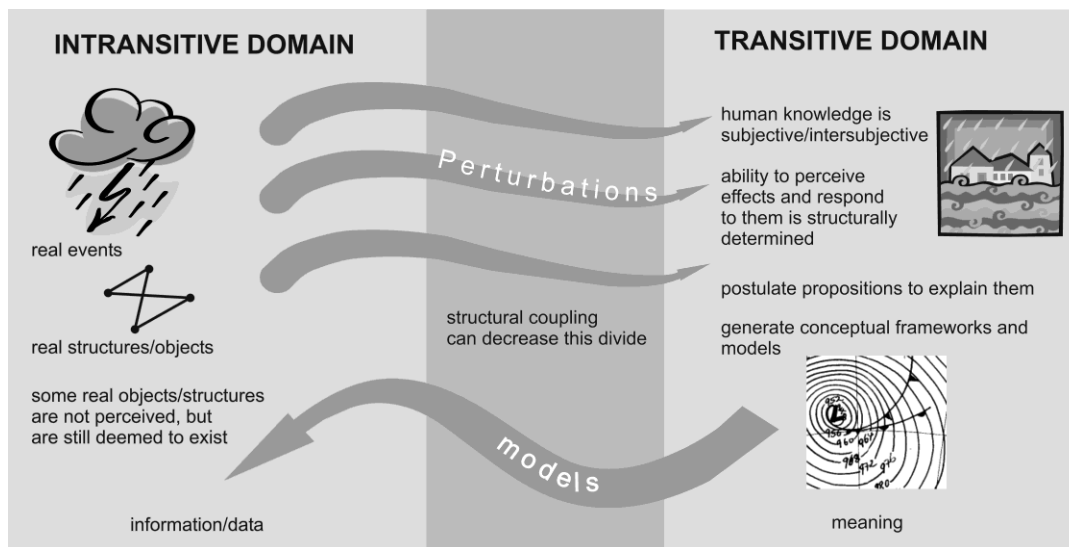


Figure 4-1: Conceptualization of critical realism (Source: Whittal, 2008 pp 92)

The world is viewed through two structurally coupled, but separate domains, the intransitive domain consisting of real world objects, structures, information (data) and events, and the transitive domain consisting of observers, perception, meaning, conception, and modelling (see Figure 4-1) (Karuss, 2005; Mingers, 2006; Whittal, 2008). Observers in the transitive domain cannot access the real world of the intransitive domain, and may only postulate its existence through observation of perturbations, and understandings of causal processes (Whittal, 2008). Reality in critical realism is explored through its causal effects. If a storm (Figure 4-1) is observed, the observer can postulate the underlying mechanisms that generate the storm (the phenomenon). Causal processes are hypothesised in the form of models (frontal system in the synoptic chart in Figure 4-1), and subjected to falsification in testing their validity. Critical realism differs from a purely empiricist epistemology, in that, even if a causal effect cannot be perceived, the existence of an underlying real cause is not denied (Mingers, 2006).

Mingers (2006) asserts that the critical realist's perspective is a *multiparadigm* approach that can make use of elements of positivism, interpretive, and postmodern paradigms where appropriate. It is therefore suitable for researchers who desire to use more than one approach in their analysis, due to the complex nature of the study. Urban customary tenure study is complex, hence the choice of critical realism that allows for this flexibility while avoiding conflict at the ontological and epistemological levels.

4.4.9.1 Critical realism and customary tenure research

The process of observing and explaining customary tenure is complex, in that; it exhibits both socio-cultural and natural realities. For this reason, neither positivism nor interpretivism on their own is adequate in researching customary tenure due to the complex nature of observing and understanding the natural and social aspects. Natural aspects such as boundary surveys and land information can be modelled using positivism. However, the social aspects are open from a system perspective and interact with their environment in a manner that cannot be controlled through experimentation (Whittal, 2008). Since the social aspects of customary tenure are part of its essence, this study is unsuited to positivist investigation.

4.5 Social Systems Approach

Systems thinking emerged as a reaction to the reductionism of traditional scientific method and the failure of the reductionism to cope with complexity in the biological and social domains (Checkland, 1999; Jackson, 2003). Land tenure research involves aspects of culture, beliefs and socio-economic considerations that add a level of complexity and system thinking has been shown to be suitable (Nkawe, 2006; Whittal, 2008).

The social systems approach integrates socio-economic, technical and political aspects of research in a holistic sense. In this research, both the natural and the social aspects form essential components and both must be accommodated. The impact of technological innovations on individuals and society is seen as mutually constitutive. The social systems approach may be very useful in addressing the overall research objective of assessing customary land tenure systems and promoting functional systems. Since the social systems approach is compatible with critical realism, and

offers an inclusive approach to understanding real world problems it is adopted. Social systems approach is usually used in action research (Jackson, 2003; Checkland, 1999). However Mingers (1997) recommends the use of aspects of different methodologies (see 4.6) in complex social situations such as the study of customary tenure. A mix of social systems tools will be identified (see 4.6).

4.5.1 Systems approach

Systems thinking involve the use of systems methodologies and concepts in studying interventions in social situations. A wealth of knowledge has been accumulated to promote informed use of systems methodology. Systems theories can be applied in the natural and social sciences. “If we are to understand what we are, and what we are faced with in the social and natural world, evolving a general theory of systems is imperative” (Laszlo, 1996: 11). Holism puts the study of wholes before that of parts. It does not try to break down complex problems into parts in order to understand them but rather, concentrates on the whole system and on ensuring that the parts are functioning and are related properly together so that they serve the purposes of the whole (Laszlo, 1996; Jackson, 2003).

Systems approaches use flexible methodologies and can switch levels depending on research interest (Laszlo, 1996). The system under study can be a cell or an atom, organ or organism, individual, family, customary land tenure or administration etc. Systems methods treat systems as integrated wholes. Aspects of customary land research such as the socio-cultural, institutional technical and legal components should not be studied in isolation.

4.5.1.1 Components of a system

Reductionism considers the parts as paramount to understanding the whole. However, the whole often takes on a form that is not recognizable from the parts due to the complex network of relationships between the parts (Jackson, 2003). Putting together independent study findings of various components of customary land administration such as African worldview, traditional leadership, dispute resolution and land tenure may give insights that may not be the same as studying them together (holistically). The model developed to assess functionality of customary

systems (see 8.9), takes political, economic, social, technological, legal and environmental systems into consideration holistically.

4.6 Mixed Methods Approach to Complex Systems

Complexity, heterogeneity and turbulence of problem situations sometimes require researchers to operate using different methodologies based upon alternative paradigms (Jackson, 2003).

Mixed methodology (multimethodology) has been found to be suitable for research in problematic situations (Mingers, 1997; Whittal, 2008) such as is expected in customary tenure research. Mingers (1997) gives three reasons why mixed methodology is gaining roots in the research world. Firstly, real world problem situations are highly complex and multidimensional. Meanwhile, different paradigms focus attention on different aspects of the situation and so mixed methodology is necessary to deal effectively with the full richness of the real world (*ibid.*). Secondly, interventions are usually processes that go through a number of phases and not just a single discrete event to be handled by a unique methodology. Some methodologies tend to be more useful in some phases than in others; therefore, combining methodologies make them more effective. Even when they perform similar functions, combining them can yield better results (*ibid.*). Thirdly, various researchers are already combining philosophical and methodological aspects of mixed methodology approaches in practice (*ibid.*). Jackson (2001) accepts the need to tailor the use of tools to the complexities of the problem situation and change them to suite changing needs. Critical realism is useful in this regard (Mingers, 1997; Whittal, 2008). Mingers (2006) identifies that critical realism accommodates pluralism of perspective (e.g. positive, interpretive/constructive, and postmodernism) and pluralism of methodology (e.g. case study, experimental design) and can provide a basis for rigorous justification of a variety of research tools used in combination.

Jackson (2001), however, argues that the use of different tools at any moment during an intervention in a social system should be based on particular theoretical rationale employed according to the rules of the methodology serving that particular paradigm. He argues that the link between methodology and tools, with particular paradigms, allows for the efficiency and effectiveness of the method, models and

techniques to be tested over time while at the same time allowing valuable lessons to be learnt about the tools. "... a meta-methodology is required which encourages and protects paradigm diversity and handles the relationships between the methodologies, based on alternative paradigms, in order to address the complexity and heterogeneity of problem situations at all stages of an intervention. The meta-methodology accepts that paradigms are based upon incompatible philosophical assumptions and that they cannot, therefore, be integrated without something being lost '' (Jackson, 2001: 239).

The paradigm incommensurability school of thought asserts that paradigms differ in terms of their fundamental assumptions, therefore, researchers must choose a paradigm they want to work with and stick to it, "although sequential movement over time is permissible" (Mingers, 1997: 13). Multi-paradigm is not encouraged for a number of reasons, particularly the supposed irreconcilable objectivist/subjective ontological and epistemological differences that exist between the empirical analytic and interpretive paradigms (Mingers, 1997). Mingers (1997) argues that cross-paradigm research is philosophically feasible, it requires an underpinning philosophical framework that can encompass the different paradigms not as meta-paradigm, making no assumptions of its own, but as a new paradigm, subsuming existing ones. Critical realism meets this criteria, Mingers (2006) argues that critical realism is not a meta-paradigm, but rather stands alongside positivism and interpretivism as an alternative. Critical realism has therefore been adopted for this research to cater for the positivist and interpretivist aspect of peri-urban customary land tenure and administration.

4.7 Case Study Research

Case studies are the preferred method of enquiring when 'how' or 'why' questions are posed. They are used to research complex issues in order to produce context-dependant knowledge (Yin, 1993; Robson, 1993; Flyvbjerg, 2004; Yin, 2009). The investigator has little control over events and focus is on contemporary phenomena within a real life context (Yin, 2009). The richness of the context is a challenge to investigators, since there are usually more variable of interest. The investigator may use multiple sources of evidence in which case data needs to converge in a triangulating function (Yin, 2009). Case studies do not represent samples, their goal

is therefore to expand and generalize theories (analytic generalization). Findings can be generalised to theoretical propositions and not to population or universe (Yin, 2009).

Case study strategy has been used extensively in research in cadastral systems (Silva and Stubkjær, 2002; Whittal; 2008; Abdulai, 2010; Arko-Adjei, 2011). The case study approach is deemed appropriate for this research. It allows for the interrogation of complex interactions among customary structures, institutions and people.

4.8 Development and Modernisation theory

A key argument against strengthening customary tenure and land administration systems is that they impede development and modernization of society. An understanding of development and modernisation theory is necessary for this research, remembering that the research is based on an African worldview. Modernization refers to the transformation which takes place when a traditional or pre-modern society changes to new forms of technological, organisational or social characteristics of advance society (Coetzee, 2001) or the final stage of social, political and economic development of societies. Fangjun (2009) defines modernization as a process of transformation from traditional society to modern society. Laszlo *et al.*, (2003) assert that the notion of development has been permeated by concepts and methods from positivism. Consequently many development initiatives are “reductionistic, myopic, and with little or no impact on the improvement of the quality of life and the sustainability of communities and societies” (Laszlo *et al.*, 2003: 105).

Modernisation theory places societies on a continuum from underdevelopment to development. Modernization is the movement towards development in a unidirectional, irreversible, measurable time period through different intervening variables as depicted in Figure 4-2. Western modernization follows the ideals of prosperity, growth, stability and efficiency. The most important components used in analysing modernisation are differentiation, integration and adaptation (Coetzee, 2001).

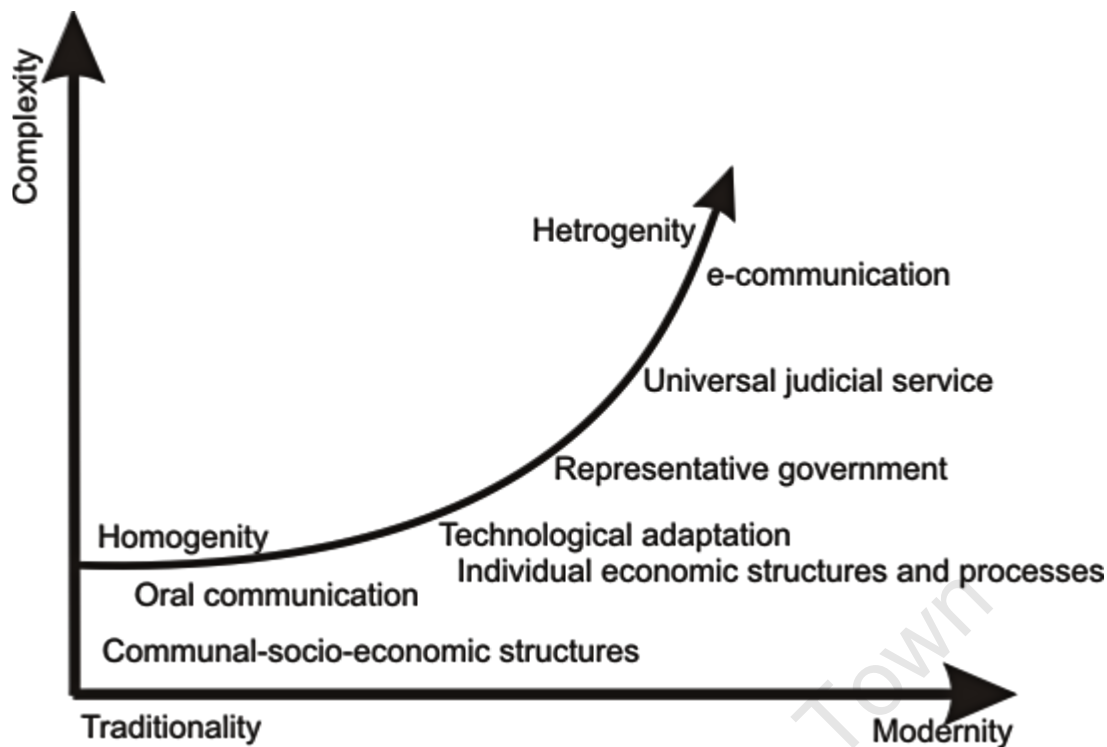


Figure 4-2: Lineal development model

Differentiation is the progressive separation of the political, cultural, judicial, economic, kinship, and religious subsystems. Modernization requires autonomous social units, elimination of traditional patterns, and “the weakening of traditional elites” (Coetzee, 2001: 35). Thus, modernization, according to this view, stands in direct opposition to the African worldview (see 4.3).

Integration unites the differentiated structures in a new way. Integration, in the modernized era, is linked to specialized political, economic, cultural groupings, bureaucratic structures and the functioning of pressure groups (Coetzee, 2001). Differentiation and (re)integration are a response to a changing environment; they explain the general trend and direction of social change.

Adaptation is the response of a social system to changes in the external environment. It provides collective meaning and direction to the potential of change in a social system. Differentiation, integration and adaptation together provide parameters for theorizing on social change.

4.8.1 Critique of the modernization approach

The modernization approach postulates that functioning of modern society is only possible when equilibrium has been achieved between variables such as economic and technological development, social differentiation and loss of cultural continuity. Coetzee (2001) argues that social consequences of human coexistence are not predictable and therefore precise nature of change in micro processes within society cannot easily be determined as prescribed by the modernisation approach. Socio-economic and political systems continually generate change (development) and reveal the ability to accommodate change in their own institutional frameworks.

Major points of critique in the above approach are discussed below.

4.8.1.1 A linear model of development

The linear approach to development, indicating a dichotomy between underdevelopment on one end and modernity on the other, is problematic. It suggests typical, identifiable conditions of underdevelopment and modernity. This is simplistic and superficial. The notion of a linear movement through ordered states is challenged by rapid change which skips “stages” along this continuum. Besides, it ignores the observation that regression to a historical state is just as possible as progress (Coetzee, 2001), and so uni-directionality of development is challenged.

4.8.1.2 External variables

The linear model of socio-economic development places emphasis on external factors in effecting change. In order to account for such external factors classifications became necessary and this led to categories such as ‘industrialised’, ‘centrally planned’, ‘capital surplus oil economies’, and ‘developed markets’ with little or no empirical basis (Coetzee, 2001). Nelson (2008) posits that innovation is crucial for economic development. Laszlo *et al.*, (2003) argue that innovation takes place within existing economic and cultural frameworks, and therefore should be integrated with established norms and interact with embedded values to stimulate effective social change. This, however, should be done with minimal cultural upheaval. Development and modernity should promote improved quality of life, which should be measured by the presence of “a holistic sense of individual and collective well-being, rather than increases in standards of living, measured by the

accumulation of external material possessions and accomplishments that may or may not contribute to sustainability and the fulfilment of human potential” (Laszlo *et al.*, 2003: 110).

4.8.1.3 *Deterministic reasoning*

The modernisation approach views society as internally homogeneous and therefore only external factors induce (development) modernisation. Since most societies are heterogeneous, the effect of external variables cannot be predicted. Besides, in focusing on external factors, contribution of individuals or society to changing social reality is given very little thought.

4.8.1.4 *Progressive differentiation*

There are strong theoretical doubts by theoreticians about differentiation as a progressive increase of autonomy of subsystems in their relations with the main system (Coetzee, 2001). These uncertainties revolve around logical status as well as causes, effects and aims of differentiation. Differentiation may imply a takeover by a subsystem of the functions previously undertaken by others. An example is, centralised government systems taking over land administration from traditional leadership and customary systems. There is also the likelihood of a partial differentiation, where only sections of society undergo progressive increase of autonomy leading to unbalanced growth and causing societal instability. Coetzee warns, “[T]he destructive effects of war, civil conflicts, and on-going ethnic rivalry in many developing countries require a reconsideration of modernization theory as a means to understand social change” (Coetzee, 2001:41).

4.8.1.5 *Modernization and economics*

Most development programmes have been reduced to economic aspects, with very little regard to other aspects of social reality, although it has been observed that cultural systems are the fundamental anchors of society and are very difficult to change (Laszlo *et al.*, 2003; Nelson, 2008; Valk, 2009). These theories assume that there are sets of economic variables that can be stimulated to promote growth, without recourse to legal frameworks, social conditions, cultural contexts, or the natural environment. Experiences of developed countries are used as models,

assuming that similar conditions exist in less-developed countries (Laszlo *et al.*, 2003).

4.8.1.6 Modernity and customs

There is no clear and mutually exclusive category of modernity and traditionality. Modernity creates its own customs with time and some traditions may endure through processes of modernisation. Customs are defined by time-honoured orthodox doctrines. Thus, with time the norms and practices of modernity become its customs. “The past is not dead history; it is the living material out of which man makes the present and builds the future” (Dubos Rene, 1968 as cited by Lenski and Nolan, 1984: 2). The fundamental basis of evolutionary theories is that, change is a cumulative process in which earlier development influences the cause of later ones (Lenski and Nolan, 1984). Thus, contrary to the practice of putting traditions, customs and modernity at opposite ends, they can coexist and supplement each other. Instead of the hasty generalization of seeing tradition and customary practices as obstacles to modernization, many traditional elements could be used to exert positive effects on the drive toward modernization (Fangjun, 2009). Strengthening of customary tenure may produce a positive effect in sub-Saharan Africa since it has most of the essential ingredients for good land administration embedded in its structure and processes since prehistory, and yet it has also adapted to meet changing needs.

4.8.2 Evolutionary theories and development

Modernisation and evolutionary theories are not the same. Le Coux and Graaff (2001) state that, the modernization theory, viewed as a potent brew of functionalism, evolutionism and free market principles, is questionable. Laszlo *et al.* (2003) agree and argue that development relates more to the world of human affairs; it is a socially constructed reality in terms of what we consider to be desirable objectives and hence allows us to make subjective and relative statements about what and who is developed and who is not. Development, Laszlo *et al.* (2003) argue, does not equate to growth. “Growth is something that we can measure through definable units of size or scale and relates to notions of physical size or numerical quantity. It provides a metric that can be applied to many processes of change, but not to those that are qualitative or conditional in nature” (Laszlo *et al.*, 2003:106).

The publication of “*The Origin of Species*” by Charles Darwin in 1859 paved the way for social scientists to use his model to explain social change. Many important principles can be derived from the general principles of evolution. However, Le Coux and Graaff (2001) identify five important assumptions that are useful for the arguments in this research.

- Social change in particular societies passes through predetermined stages
- Change always takes place along a single path – change is linear and repeatable
- Change does not occur in revolutionary jumps – change is gradual
- Evolutionary change is irreversible – no possibility of regression
- Change leads to improvement – more advanced communities are better places to live than primitive ones.

Le Coux and Graaff (2001) argue that all these features of evolutionary thinking are questionable. Societies are not homogeneous. If societies are interconnected and all societies are accommodated in a global system, then changes cannot be in stages, linear or repeatable. There is no guarantee that changes are gradual, since the change from class-divided societies to capitalism was revolutionary. Again, changes in the use of global positioning systems and cell phone technology have been revolutionary, impacting many societies at similar times. The direction of change is difficult to predict, it is dependent on the value system of a particular society (Laszlo et al, 2003; Nelson, 2008) and therefore change could be ‘backward’. It is moral arrogance to think of ‘advanced’ societies as better places to live than others (Le Coux and Graaff, 2001).

4.8.3 China’s development highlights differences from Western thinking

McDonough *et al.* (2010) acknowledge that China is a major player in the global economy and should not be ignored. They argue that accommodating China’s large and rapidly growing economy may be a major complication in the developing efforts to restructure global capitalism (McDonough *et al.* 2010). The Chinese have gained this strength through their own efforts; sub-Saharan Africa can learn some lessons from the Chinese.

Zhu (2007) suggests that China's reform is not guided by any received theory, of whatever form— neoclassical market theory, the grand Marxist model, World Bank/IMF development prescriptions or the popular Washington Consensus. Instead, it is informed by a pragmatic approach and facilitated by a set of historically situated structural factors. Zhu (2007) attributes the success of China to Chinese tradition. He asserts that the Chinese worldview considers human life as a complex web of relations: relations with the world, relations with the mind and relations with others. These relations are called *wuli*, *shili* and *renli*, respectively, abbreviated to WSR (Zhu, 2007). Whittal (2008) drew parallels between the Chinese worldview and African worldview in the importance of the collective in comparison to the individual. Fangjun (2009) argues that on their way to modernization the Chinese did not import western theories indiscriminately, but were selective, adopting the useful and discarding the unfit elements. In so doing, the Chinese formed their own idea of development with Chinese characteristics. Zhu (2007) notes the Chinese leadership was “knowledgeable about the depth and power of the family value, survival ability, achievement orientation and pragmatic mind-set of the Chinese. What Deng accomplished was not to design ‘the system’ from above, which would be practically impossible ... but to allow mundane experimentation from below. Indeed, all milestone institutional changes were not designed by the ruling elites at the centre, but innovated by numerous unknown actors at the local front line” (Zhu, 2007: 1514).

It is obvious from China's development that it does not follow any classic theories. They only built on their traditions and took advantage of technological advancement to achieve their present status as a growing economy (Zhu, 2007; Fangjun, 2009). Although, China still has a lot of challenges in terms of its land administration and it is not without disputes over land, sub-Saharan Africa can still learn from positive aspects of their development.

4.8.4 The question of land in development and modernization

Modernization in the West can be traced back to over 300 years ago, rooted in the transition from feudalism to capitalism in England (Coetzee, 2001; Bernstein, 2007; Fangjun, 2009). Modernization theory addresses a country's transformation from

traditional to modern forms, usually through various processes including land reform.

Land reform began in relation to the agrarian question in the transition to capitalism. This is linked with inequality, social injustices, and political struggles (Ekins, 1996; Bernstein, 2007). Bernstein argues that land reform is a motif of the modern world. It started from Europe and has now influenced the diverse and complex histories in both the North and South. There is a link between economic development and cadastral systems supported by reliable titles. Individual property rights were extended to the developing world as a result of the economic success Western Europe had with the cadastre (Stubkjaer, 2009).

Land was used to promote certain goals in the West: promotion of social justice in the face of oppression, enhanced livelihoods and security for those employed in agriculture. These were expressed in the neo-populist aspirations of efficiency and equity (Bernstein, 2007; Hendricks, 2001). Land [re]distribution is a significant component of the agrarian question. This is related to labour issues because of the inability of contemporary capitalism to provide adequate and secure employment to the majority of the poor. Even though modernisation is thought to be necessary, the importation of the process of land reform into sub-Saharan Africa without taking into consideration prevailing socio-cultural conditions has undermined customary tenure and retarded its steady progress. This is because land reform in the region almost always implies registration and individual titles to land (see 3.3 and **Error! eference source not found.**) and ways of retaining and strengthening customary practices are ignored. More often, wealthy individuals buy land from poor indigenes, who are forced to seek new livelihood(s) in urban areas.

4.9 Chapter Summary

This chapter has reviewed the African worldview. It is noted that traditional African worldview is underpinned by religious beliefs. There is no distinction between the material and the spiritual worlds in African worldview. Ancestors are revered and it is believed that they take an active part in the world of the living. The traditional African is a community-person who seeks the community's interest in a way, to safeguard his/her own interest. Time is relational and it is conceived as events that

have taken place or are taking place or will take place in the near future. Possession and use of land for a specific purpose is of more relevance than ownership since ownership rests with, not only the present generation, but ancestors as well as future generation. In the subsequent chapters, the implications of the worldview on customary tenure are analysed.

The theoretical grounding for various research paradigms have been discussed along with their methodologies. Critical realism as well as mixed methodologies has been identified as suitable for peri-urban land tenure and administration systems. This lays a firm foundation for the discussion of suitable methodology for this study in the next chapter.

The unidirectional, irreversible, time-bound concept of development has been critiqued and the idea that sub-Saharan African development ought to follow the route of the developed world without question has been challenged. The Chinese development followed a unique path adapting what is useful from outside to supplement what they had. Sub-Saharan Africa may learn from their experience. Customary tenure and land administration systems should not impede development or modernisation. If harnessed well, they can be useful tools to propel the sub region to prosperity, one that would promote the collective wellbeing of its entire people.

5 EMPIRICAL RESEARCH METHODOLOGY

5.1 Introduction

This chapter discusses the empirical research methodology used in investigating urban land delivery in customary tenure and land administration. In Chapter 4, it was proposed that customary peri-urban tenure research is complex and needs to incorporate natural and social systems, and therefore it requires a multiparadigm and multimethodological approach, to examine the subject fully. Case study strategy is adopted and systems methodologies are identified.

5.2 Case study Research

Case study research is described as an empirical enquiry that investigates a contemporary phenomenon within its real-life context, using multiple source of evidence (Yin, 2009; Yin, 2003) and allows the investigator to retain holistic and meaningful characteristics of the real life event (Yin, 2009). Case study is preferred when investigating contemporary events, which cannot be manipulated. It has the advantage of direct observation of events being studied and interviewing of persons involved in the event (Yin, 2009).

Case study strategy is generally used in cadastral and land tenure research (Silva and Stubkjaer, 2002; Whittal; 2008; Abdulai, 2010; Arko-Adjei, 2011). It has the ability to deal with a variety of evidence (see 4.7). Case study methodology is flexible and can be used to address complex problems such as peri-urban customary land tenure research.

Case study focuses attention on a particular issue which is the unit of analysis (Yin, 2003, 2009). This study design is based on multiple case studies. In this study customary tenure is the broad unit of analysis, however, for each of the case study areas sub-units of analysis were chosen for the investigations. The themes for the subunits are traditional land administration, access to land, good governance, land-dispute resolution, land professionals, land records and registration and provision of infrastructure. Multiple case studies are useful for the investigating of more than one unit of analysis. They allow for the use of multi-methods within the subunits and results from the subunits are integrated in the final analysis. Triangulation of data

from the subunits improves the internal validity of the investigation (Yin, 2009; Gibbert and Ruigrok, 2010).

Customary tenure involves complex socio-cultural, political, religious and economic relationships. It is in such an environment that case study analysis becomes useful. The researcher is able to include the perspective of informants and also those of relevant groups and stakeholders. Among the key stakeholders in this research are traditional leaders, community members (indigenes and strangers, male and female), government officials, and private organisations.

5.2.1 Critical Realism and Case Study

Critical realism has been shown to encompass multiparadigm and multimethods (see 4.4.9). Silverman (2010) argues that no methodology is intrinsically superior to the other and therefore quantitative and qualitative approaches should be considered complementary parts of a systematic empirical search for knowledge. This is precisely what critical realism accommodates and is useful in customary tenure case study.

5.2.2 Multiple case study design

Multiple case studies are useful for investigating systems containing more than one unit of analysis (Yin, 2009; Creswell, 2009). Customary tenure, especially in peri-urban areas is complex. Accra and Kumasi (see 1.6.1) case study areas were used in the research. Multiple case strategies allow the application of mixed methodology to be applied within the subunits (see 8.3, 8.4, 8.5 and 8.6) and in later stages cross-case comparisons were made (see 8.7). In the research, interviews were conducted with key informants, documentary evidence, such as site plans, allocation notes, photographs of uncompleted buildings resulting from land conflicts; personal observation and participant observation in some cases were used. Triangulation of the methods strengthened internal rigour and made data triangulation possible. Replication logic was then possible. Each case analysis lead to identification of particular patterns in case processes. Multiple cases contributed to a better understanding of peri-urban customary land administration and lead to the identification of different patterns and interplay between customary process and actors (Yin, 2009 and Creswell, 2009).

Key informant interviews are used and not door-to-door or household interviews because many occupants rent properties and have not interacted with authorities directly. Aspects relating to functionality of peri-urban land administration are obtained from specific key informants such as traditional leaders, indigenes who are directly affected by activities of the land administrators and people who have acquired and developed properties in the case study areas. From this sample, relevant aspects of functionality or disfunctionality are measured.

5.2.3 Selecting of cases study areas

Customary practices are culturally dependant and may even change from place to place within the same culture (Cotula and Cisse, 2007). It is, however, possible to find common underlying trends across different cultures.

The cases were selected after extensive literature review of current customary tenure issues and challenges in peri-urban areas in Kumasi and Accra (see 1.6.1). The selection was based on purposeful and theoretical sampling logic rather than statistical logic (Yin, 2009) in order to produce literal and theoretical generalisation. The effect of traditional land administration, good governance, land dispute resolution, use of land professionals and keeping of land records/registration on peri-urban customary tenure areas were the focus of the data required and access to such data informed the choice of case study areas.

The selection of the case study areas were based on the following criteria:

- the area should be a peri-urban area in Kumasi or Accra
- there should be high demand of land in the area
- the area should be under the authority of one traditional leader
- the traditional authority should consent to the research being done in the area.

Access to the various case study areas was made through personal contacts normally liaising with friends and colleagues, land surveyors, who have contact with the various traditional leaders. The identified traditional leaders were served with letters of introduction stating the aims and objectives of the projects and the type of assistance required. The researcher, sometimes accompanied by the person who

introduced him, delivered the introduction letters personally. Other times, appointment for the delivery of the introductory letter were made by phone and in a few cases; the introductory letters were delivered by the liaisons. Where personal deliveries were made by the researcher, he also took the opportunity to identify key informants for the interview otherwise this was done on the first site visit. Table 5-1 shows the number of people interviewed in the study areas.

Table 5-1: Interviewed candidates

Interviewee	Kumasi	Accra	Remarks
Traditional Leaders	6	6	Key informants
Elders	6	6	Informant
Women (indigenes)	6	6	Informant
Strangers	6	6	Informant
Surveyors	4	3	Informant
Planners	3	1	Informant
Registrar of Lands	1		Informant
Total	32	28	

Other research participants were also interviewed as indicated in Table 5-1. The objective of additional interviews was to confirm or refute the information that was received from key informants. Some interviews were recorded while notes were made for others, depending on the preference of the interviewee. In addition to this list, there were informal discussions with community members. The information sought was either to confirm or refute information received from the listed stakeholders. In both case study areas, ordinary people readily volunteered useful information, which then either confirmed or refuted the information from the key informants. It was found that after interviewing stakeholders listed in Table 5-1 and supplementing the data with documentation and field observations, additional interviews did not alter the information already obtained. It was concluded that saturation sampling was reached.

The proposed and the actual case study areas are tabulated in Table 5-2. Most of the changes were due to access problems. A brief discussion of each case is given in the next chapter.

Table 5-2: Proposed and actual case study areas

KUMASI (Matrilineal)		ACCRA (Patrilineal)	
Proposed	Actual	Proposed	Actual
Appeadu	Appeadu	Gbawe	Ablekuma-Afienya
Asokore-Mampong	Asokore Mampong	Abokobi	Obojo
Sereso	Sewua	Oyerifa	Teiman
Adumasa	Boadi	Amarhia	New Ningo
Ayediasi	Ejusu	Oyibi	Amarhia
Kotei	Ekyem	Frafraha	Malejor

5.2.4 Data collection and management

Data collection was undertaken using multiple sources and techniques. The researcher carried out all the interviews personally. To aid in data collection and ensure consistency in the interviews, a set of questions intend to explore the research questions, were drafted and used as a guide. Follow-up questions were used to seek clarification on issues, concepts or patterns. Interviews with key informants were recorded, permission having been sought from the interviewees prior to the actual event. Whenever an interview was recorded, the recorder was placed at a vantage point before the commencement of the interviewing process to avoid distracting attention during the interview. On average, interviews with key participants took about one and half-hours and each key informant were visited at least twice. Minor issues were clarified by phone.

Interviewing of the land surveyors, planners and the Registrar of Lands (Kumasi) went beyond the scheduled times, lasting between one and two hours. The rest of the interviews were between 30 minutes and one hour. The traditional leaders or the land

surveyors assisted in negotiating access to elders, women and strangers who were interviewed. The strangers (non-indigenes) who were interviewed were, in almost all cases, among the first strangers to have settled in the case study areas.

Most of the informants were enthusiastic about the topics; they were ready to go way beyond the agreed time schedule. They asked the researcher not to hesitate to come for further clarifications if the need arose. They were also ready to answer his queries by phone.

In addition to the interviews, samples of designed layout schemes, allocation papers and site plans were inspected and where it was possible copies were made available to the researcher. Some traditional leaders were ready to highlight recent developments that they had initiated in their communities. Pictures were taken of important developments that will 'triangulate' with other data and enhance credibility. Using multiple sources and techniques of data collection improves validity.

The researcher has been living in Boadi from 2004 and has been involved in land transactions in Boadi and Ekyem. He is therefore considered a participant observer in those cases.

The original design of the research anticipated the collection of dispute resolution cases at the Asantehene's Land Secretariat and the Kumasi High Court. The intention was to compare the rate of dispute resolution in the formal courts and that of the traditional court. However, this did not materialise since at the time of the data collection in Kumasi, it was not possible to break through the iron curtain at the Secretariat to obtain data. The officials were not cooperative and were reluctant to divulge any information. The secretariat is now under new management and although the researcher, had the opportunity to interview the new Chief Executive Officer, the office is newly staffed and they are trying to orient themselves in their new positions. The situation regarding dispute resolution at the Asantehene's Land Secretariat (ALS) is likely to be quite different now and outside the scope of the case studies.

This is not a longitudinal case study; the data collection took place between 2010 and 2012. However the data collection both the patrilineal and matrilineal areas reached theoretical saturation, where incremental learning was minimal. Eisenhardt (1989) asserts end of cases are dictated by theoretical saturation and pragmatic considerations like time and funding.

The researcher transcribed the interview data. A database of the audio recording and files of the hard copies are filed and kept by the researcher.

5.2.5 *Personal bias*

The main researcher was trained as a Geodetic Engineer at the Kwame Nkrumah University of Science (KNUST) in Kumasi, Ghana where he obtained a BSc in Geodetic Engineering. He worked as a lands surveyor for the Project Management Unit of the Ministry of Education in Accra and later the Departments of Lands, Surveys and Physical Planning in Lesotho. His MSc. was in Land Surveying (Land Management) at the then University of Natal, Durban. He is currently a lecturer at the Department of Geomatics Engineering at KNUST.

He grew up in a rural environment where customary tenure was practiced, and the researcher as interest in land that is customarily owned. He has personally been involved in land acquisition in customary areas in both Accra and Kumasi. Besides, he has been involved in land administration in urban areas in Lesotho, where customary tenure is legally abolished. He therefore has some experience with the challenges facing both customary and formal land administration in Africa.

His training and work experience leans more to the positivist paradigm. However, this bias is counter-balanced by the use of multifaceted triangulation in data collection and analysis.

5.2.6 *Analysis*

Analysis of this research is based on the theoretical foundations that were discussed in Chapters 2 to Chapter 4. Yin (2009) suggests analysis in case study begins as soon as data collection starts and so it was progressively undertaken.

Firstly, each case was assessed against the good governance framework (see 3.5.1) to identify it as functional or dysfunctional. Good governance framework developed in one of the cases (Akrofi and Whittal, 2011) was used for the classification of functional and dysfunctional customary systems using Likert-scale (Pearse, 2011).

The resultant functional and dysfunctional systems are analysed to determine the causes of functionality or dysfunctionality in the patrilineal and matrilineal areas. Patterns within and between cases were identified. The object of this analysis is to unearth literal replication for the cases that correspond to predicted patterns and theoretical replication for those that deviate for peculiar reasons.

Furthermore, 7Es performance indicators were used to evaluate aspects that contribute to functionality (see 8.8). Finally, retrospective analysis using SSM was carried out in combination with PESTLE analysis to develop a framework for assessing urban customary tenure (see 8.9).

5.3 System Methodologies suitable for customary peri-urban land administration

In section 0, a social systems approach was motivated. This section seeks to analyse the various social systems to find out which methodologies may be applicable to assessing and modelling customary tenure systems in peri-urban areas.

5.3.1 *Functionalist social systems*

The functionalist social system approach aims to improve goal seeking and viability. It uses scientific methods to probe the parts of a system, interrelationship between them and the relationship between the system and its environment. Functionalist social systems are associated with machine, organism, brain, flux and transformation metaphors (Jackson, 2003).

The functionalist social systems are hard systems thinking, system dynamics, organizational cybernetics and complexity theory. They were developed because of the failure of reductionism in dealing with the problem of increasing complexity and turbulence (Jackson, 2003). They stress the efficient use of resources in achieving goals and successful design of organizations to adapt to change in the face of

complexity and environmental change. They are functionalist in character and differ in the way they deal with complexity.

5.3.1.1 *Hard systems thinking*

Operational Research (OR), System Analysis (SA) and System Engineering (SE) were developed during the Second World War and were used to assist the United Kingdom and her allies during the war. They are used to optimize the performance of a system in pursuit of clearly identified goals (Jackson, 2003). Emphasis is placed on the application of system methodologies that aid achievement of set objectives. This is done by applying scientific models, rational testing, implementation and evaluating processes that help the elimination of problems or obstacles that would impede the achievement of the set objectives (*ibid.*).

Hard systems thinking have been criticized for its inability to handle complexity of different beliefs and values, and to deal with issues of politics and power. In addition, it requires mathematical models to produce optimal solutions of problems; however, customary tenure problems in peri-urban areas are complex and subject to rapid change and therefore are not amenable to such mathematical modelling.

Another limitation of hard systems thinking is that it is unable to deal satisfactorily with multiple perceptions of reality. A goal driven approach may not be suitable when the establishment of agreed objectives often lie at the very heart of the problem to be tackled (Jackson 2003). Hard methodologies lack mechanisms for generating consensus on diverse objectives, which along with politics and power are common occurrences in customary tenure systems. Hard systems thinking therefore cannot be used alone for analysing land tenure and cadastral systems.

5.3.1.2 *System dynamics (SD)*

System dynamics is based on the theory that multitude of variable exists in complex systems and these are related in feedback loops that result in system behaviour. The systemic interrelationships between feedback loops determine the structure of a system, which also determines system behaviours (Jackson, 2003). Structure is considered the main determinant of system behaviour and can be described in terms of the relationships between positive and negative feedback loops. Systems dynamics cannot be employed in customary tenure research because of its inability

to incorporate cultural, religious, social aspects into its models. Stakeholders shape social action through their motivations, intentions and other vested interests. It is therefore important to understand the subjective interpretation of the world that social actors employ. There are cultural, ethical, political and religious factors that prevent customary systems in acting in rational ways as prescribed by system dynamics.

5.3.1.3 *Organisational cybernetics*

Organizational cybernetics asserts that complex systems have a 'recursive' nature. They exist in hierarchies; however, organizational forms of lower level systems are identical to higher levels. All viable systems exhibit the same organizational characteristics (Jackson, 2003).

Organizational cybernetics pinpoints systemic laws that would make an organisation successful, however, it neglects or does little about human components of organisations who attribute meaning to their situations and act according to their own purposes (Jackson, 2003). Cybernetics does not do enough in the areas of culture and political system. Power imbalance can disorganise. Organisational cybernetics can be used to evaluate the power system in customary peri-urban land tenure and administration; however, it is inappropriate to be used alone for customary tenure research unless in combination with other systems.

5.3.1.4 *The Complexity theory*

Complexity theory focuses on disorder, irregularity and randomness. It accepts instability, unpredictability and change as essential parts of organisations (Jackson, 2003; Checkland, 1999).

Claims of complexity theory have not been demonstrated clearly as applicable to social complex evolving systems, as have been done for physical and biological systems. Physical systems are governed by a limited number of deterministic laws while innumerable variables and uncertainty abound in social systems (Jackson, 2003). Customary land administrators think, learn and act according to what they want to do. They are capable of reacting against laws that are supposed to apply to their behaviour. Hence, complexity theory is not recommended for this research.

5.3.2 *Interpretivist social systems*

These systems approaches are intended to help managers improve on their decision and achievement of organisational goals. They were developed because not much attention was paid to different values, beliefs, philosophies and interests by functionalist system approaches. Interpretive paradigm believes social systems result from purposes people have, because of the situations they face. It seeks to make sense of the different meanings people bring to collaborative activity, and discover the overlaps, which result in shared purposeful activity. Decisions are taken based on participative involvement of key stakeholders. Resolution of problems is based on the clarification of purposes and formulation of elegant solutions acceptable to all stakeholders, and ensures commitment to set goals (Jackson, 2003). Culture and political metaphors are associated with interpretative social systems.

5.3.2.1 *Strategic assumption surface testing (SAST)*

SAST is a systems methodology designed to tackle wicked problems characterised by lack of clarity about purpose, conflict prone, uncertainty about environment and social constraints. This is done by embracing subjectivity in the systems approach. Models capture restricted views of a system and therefore there should be room for subjectivity, which is possible through stakeholder participation (Jackson, 2003). SAST depends on participants to have their assumptions exposed; however, the powerful are not likely to reveal their assumptions. In 'coercive' context, SAST will be distorted and will benefit the powerful (Jackson, 2003). It is an action research and therefore not recommended in this research.

5.3.2.2 *Interactive planning*

Interactive planning is designed to cope with messes that arise from increased complexity, change and diversity (Jackson, 2003). It seeks stakeholders' approval and commitment for ideal design. It also brings the creativity of the community to bear on current problems and helps in finding acceptable solutions. Objectivity in social systems comes about through stakeholder interaction with diverse values. Planning and design must be based on full participation and involvement of stakeholders, in that, improvements need to be based on stakeholders' criteria, not that of the analyst, since reality differs from stakeholders to analyst/consultants (Jackson, 2003). Customary tenure stakeholders must be encouraged to plan for

themselves. Professionals should guide stakeholders with their professional inputs to design a future in line with their worldview. Interactive planning may have useful application in customary land administration, where the concept of African communitarianism (see 4.3.2) is upheld. However, it is not used in this research due to dominant conflicts and power play, in customary peri-urban areas.

5.3.2.3 *Soft system methodologies (SSM)*

Jackson (2003) argues that SSM methodology enables intervention in ill-structured problem situations, where relationship maintenance is as important as meeting set goals and what is to be done is as important as how it is done. Models in SSM are epistemological devices use to find out about the real world. SSM is based on a paradigm of learning rather than optimisation. SSM considers reality to be problematic and therefore does not model it systematically; rather it works with different perceptions of reality and by so doing facilitates a systematic process of learning, engaging different viewpoints, leading to purposeful action in pursuit of improvement. SSM is interpretative in its philosophy. Methodologically, SSM are mental constructs of reality.

The two streams model of SSM gives equal attention to cultural and logic based stream of analyses; while the seven stage learning cycle model concentrates on the logic based stream of analysis to resolve a problem situation. The two stream analysis ensures that all systems that contribute to the problem situation are considered, thereby creating a multiple perspective of the problem situation and how best to get to a desired solution through dialogue of all stakeholders.

PESTLE, an acronym for Political, Economic, Social, Technological, Legal and Environmental analysis is used in this research as the systems in the two-stream model of SSM (see Figure 5-1). PESTLE is a useful strategic planning technique that provides a framework for analysing the holistic effect of these factors (Hornungova and Kilmkova, 2011) on customary peri-urban land delivery and administration. The framework is used to identify factors that affect customary tenure, and which of these contribute to functionality.

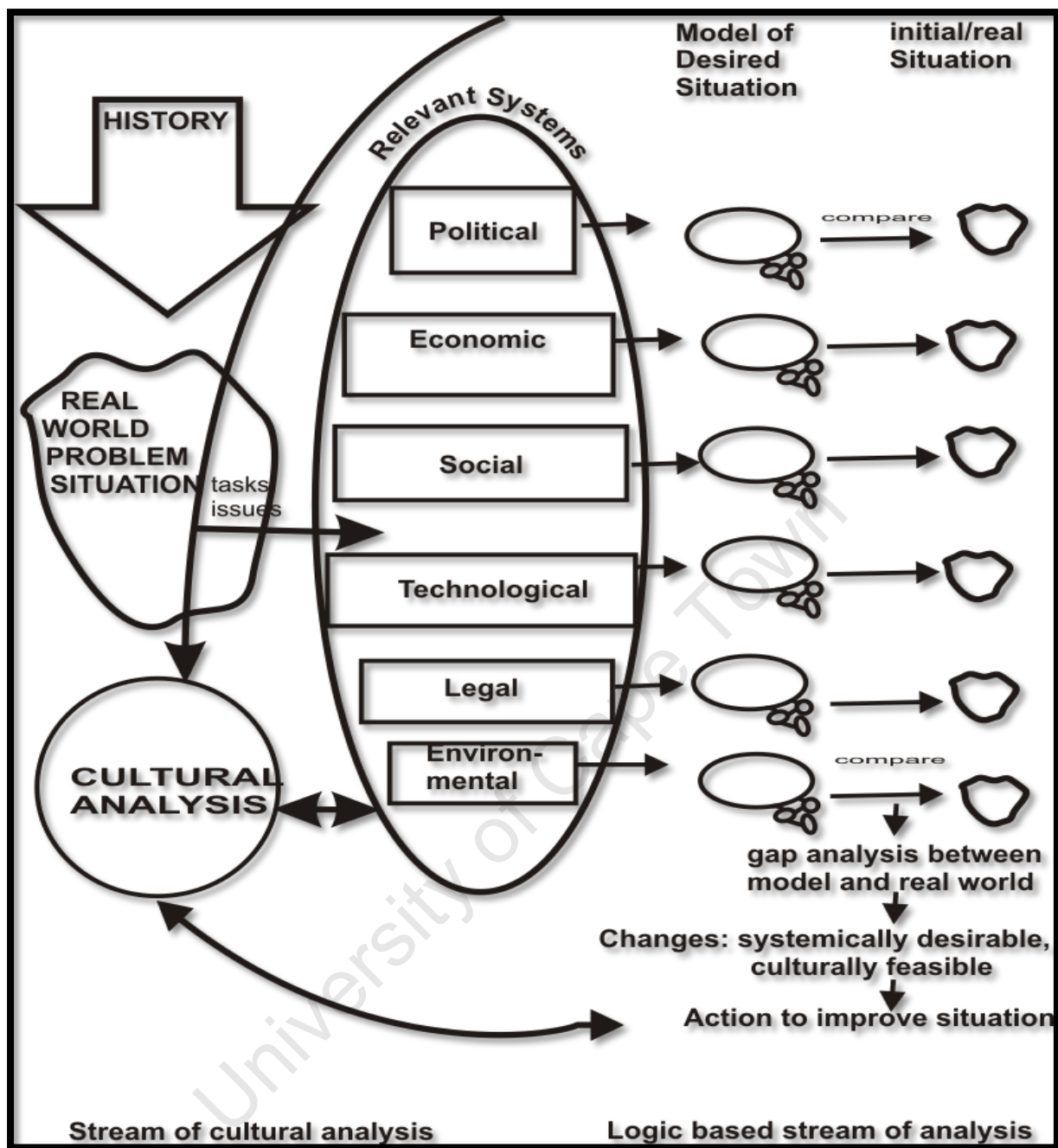


Figure 5-1: Two Stream model of SSM (Jackson, 2003, 189)

SSM does not constrain methods used (Jackson, 2003). It is capable of providing a unique response to each situation. Its flexibility ensures its relevance in most situations. It encourages cyclic learning which develops naturally in investigating complex social processes used in action research, it can also structure debates that lead to shared perceptions or accommodation between different stakeholders so that desirable change can be carried out. However, this research does not use SSM to such an extent since it is not an action research.

Jackson (2000), in criticising SSM, argues that it is suited for pluralist situations where there is the need for shared appreciation among stakeholders about what needs to be done. It offers also limited perspective on why problem situations occur. Hard system thinkers are good at prediction and control; they argue that some matters are better dealt with by experts than to leave them for inter-subjective agreements (Jackson, 2003). Emancipatory system thinkers see SSM as limited in its application, as it assumes a consensus worldview and loses sight of fundamental conflict of interest. They argue that social systems are endemic with deep seated conflicts characterised by asymmetry of power. The notion of participation as appropriate and sufficient mechanism for achieving mutual understanding of purpose is therefore an exaggeration. It is easy for those with power and influence to dominate discussions and have their priorities reflected in outcomes (Jackson, 2003).

SSM could be very useful in cadastral and land tenure research, especially in dealing with the different worldviews and socio-cultural issues. The use of soft system modelling excluding action research components means that the criticisms levelled by Jackson are not relevant here. It is therefore adapted to be used in the analysis of this research (see 8.9).

5.3.3 *Emancipatory social systems*

Emancipatory social systems: critical systems heuristics and team synte-grity, are rejected for this research. Both are designed for action research and so are not considered further.

5.3.4 *Postmodern social systems*

Postmodernists do not believe in objective truth but rather multiple truths resulting in incommensurable interpretations of reality (Jackson, 2003). Postmodern social systems are rejected for this research.

5.4 Chapter summary

A mixed approach with critical realism as the underlying philosophy is identified as appropriate for this study.

The multiple case study strategy was used. Case selection was based on purposeful sampling and not statistical sampling. Case study areas were selected in consultation with experts in the land profession, who also gave valuable assistance in locating informants. A variety of data collection strategies were used, including surveys, in-depth interviews, documentation, participant observation and artefacts. These strategies were found useful and complementary. They enable triangulation of data and enhance the validity of the study. The analytical framework is internal case analysis as well as cross case analysis using pattern matching and cross-case synthesis.

Various systems methodologies are rejected in this chapter while the two streams analysis of SSM is found appropriate to the study. SSM is therefore used to analyse the functional and peri-urban systems using the empirical results of the case studies, once cross case study has been undertaken.

The next chapter presents the empirical evidence from the case studies while chapter seven deals with the analysis.

6 CASE STUDY NARRATIVES

6.1 Introduction

This chapter focuses on customary peri-urban land delivery and land administration as practiced in the case study areas. It also reports on traditional and government establishments that influence these systems.

Case studies for this research were from peri-urban areas of Accra and Kumasi. These are the two cities in Ghana with populations of over a million (Ghana Statistical Service, 2012). **Error! Reference source not found.** is a Map of Ghana indicating the case study areas. Larger brown up maps of the case study areas are presented in Figure 6-2 and Figure 6-8 for the Accra and Kumasi cases respectively.

Four of the cases in Accra have some affiliation with La Stool Lands. A brief discussion on La Stools therefore precedes the narratives of these cases (see 6.2). There is a similar situation in Kumasi, where all the cases except for Ejisu, fall under the Kumasi Traditional Council. Ejisu is the municipal capital for the Ehisu-Juaben Municipal Assembly.

All land transactions in the Kumasi Traditional Council require Asantehene's concurrence to validate them (Asokore Mamponghe, pers. comm., 2010). All land transactions within Kumasi therefore go through the Asantehene's Land Secretariat (ALS). A brief report of the activities of the secretariat is therefore presented (see 6.8.1).

All the case study areas in Kumasi practice matrilineal inheritance while all the Accra case study areas practice patrilineal inheritance. Inheritance is a major means of access to land in customary areas, there is virtually no virgin forest areas to be occupy (Kyeremanten, 1971). This research therefore explores the chances of accessing land through matrilineal or patrilineal inheritance. In Asante, assets such as buildings and farms are historically bequeathed to the matrilineal family rather than spouse or surviving children of the deceased (Berry, 2009b).

6.2 La Stool lands

La (formerly Labadi) is a coastal town in the eastern part of Accra. All the case study areas in Accra except New Ningo and Ablekuma-Afiencya, are related to La rural land in one way or another. La is divided into seven Quarters and each Quarter has its own land as well as the land on the outskirts adjoining the quarter. The head of the Quarter is responsible for the administration of all land in the area. The chief of La does not give out land because, land belong to Quarters and is administered by Quarter leaders (Tsuru iii & Sai, 2010).

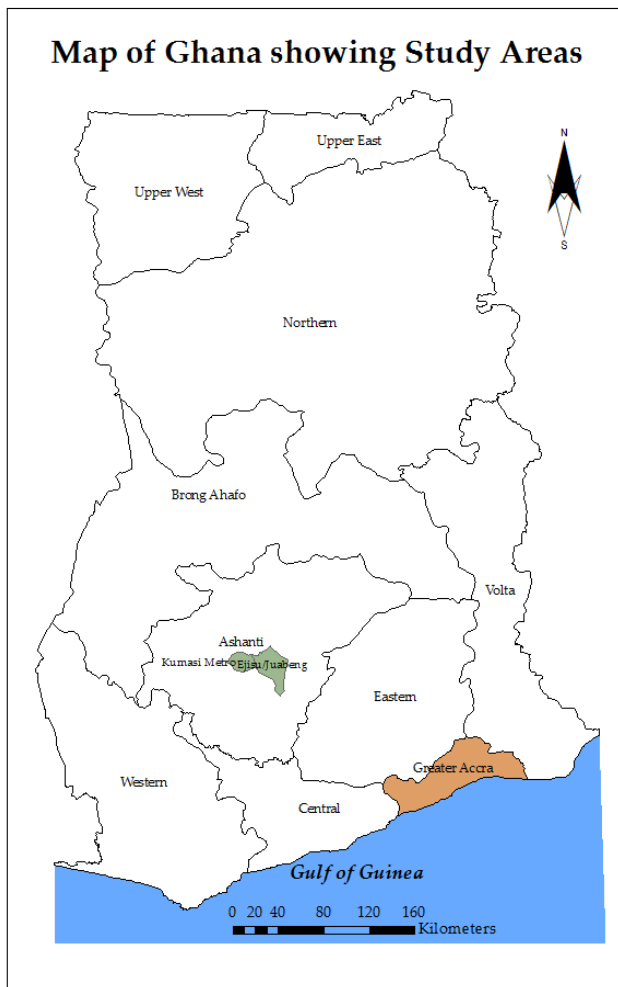


Figure 6-1: Map of Ghana showing study areas

Most of the La rural lands were seized from Nungua in 1690 (Tsuru III & Sai, 2010). Nii Odai Atsen II and his Mankralo Okang Mashie fought and defeated the Nungua and gained access to a large tract of land stretching to the Akuapem Hills (see Figure6-2).

La Stool Lands were settled by subjects of the La. Such settlements own allegiance to the La Stool. The La Stool is the allodial owner of such lands (Tsuru iii & Sai, 2010). Heads of La rural villages make grants to subjects of La for subsistence farming or for construction of dwelling units. Grants to strangers are only valid with the prior approval of the La Chief (Mantse). His signature on the document indicates approval (Tsuru III & Sai, 2010).

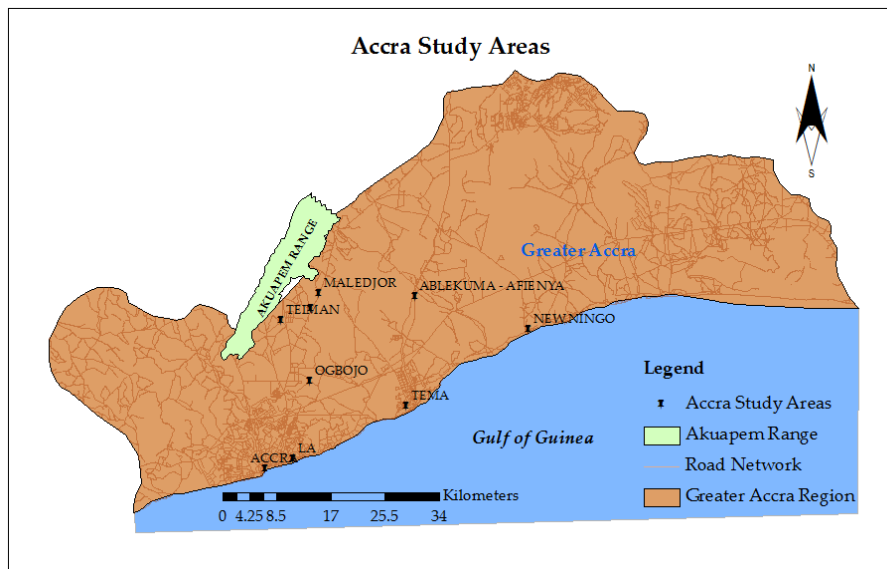


Figure6-2: Accra study areas

Although Amrahia, Maledjor, Ogbojo, and Teiman (see Figure6-2) all claim La as their ancestral town, only Maledjor and Teiman consider their land as Stool lands. Amrahia and Ogbojo are considered family lands and therefore the Chief of La has no control over land in these towns. Some towns resist the idea of being considered as stool lands (see 6.4 and 6.7).

6.3 Maledjor

Maledjor is a La rural village along the Accra - Dodwa road. It is the last settlement under La control in that area. The land was captured from the Nungua's around 1690 AD (Tsuru iii & Sai, 2010). The ruling family is the Sowah Antoni from Akwatia-La. It shares boundaries with Oyibi, Amrahia, and Kantamanso. Although the Chief and elders admit that they are part of La stool lands they assert that Maledjor lands

are family lands. Each family has a specific area where they have been farming over the years. The La Mantse (Chief of La) cannot claim any land in Maledjor without first consulting the relevant family head (AM1, 2011).

The elders explain that initially the people of Ga did not have chiefs. Traditional practice dictates that Ga villages choose the person who had settled in the area for the longest period as the headman to administer land. Installation of chiefs in Ga rural areas is of recent creation (AM1, pers. comm., 2011). The current chief, Nii Sowah Atoni II, is the first chief in Maledjor (AM1, pers. comm., 2011).

6.3.1 *Land for Indigenes*

Land for indigenes is virtually free according to custom. Indigenes who wish to acquire land have to provide a gift to their family elders in the form of alcoholic drinks and they are then shown areas to farm or build on. The situation in Maledjor is such that, in addition to these gifts, indigenes have to pay a token to defray the cost of land litigation which is rampant in the area.

Women have access to land through gifts for building purposes. Sometimes they have to go through the same process as men to acquire building plots. A woman, however, cannot sell land or occupy any land without permission (AM1, pers. comm., 2011). “I have given my daughters land as gifts and nobody can take it away from them” (AM2, pers. comm. 2011). An indigenous woman interviewed, (AM4, pers. comm., 2012) considers the denial of ownership rights for women as against their human rights. Her assertion is that, it is women who are the most active in farming the land and, by so doing, protect the land from encroachment, but when it comes to selling the land they have inferior rights (AM4, pers. comm., 2012).

6.3.2 *Strangers*

Strangers are given leasehold depending on their plans for the land. There is no discrimination between women and men. Ability to pay is what determines who gets land in Maledjor and not gender. A stranger house-owner interviewed (AM5, pers. comm., 2012) alluded to the fact that it was not easy to develop his plot. There were claims and counter claims to the land but the chief stood by him and he was able to

build (AM5, pers. comm., 2012). There are no reported incidents between indigenes and strangers in Maledjor.

6.3.3 Boundaries

Boundaries of Maledjor have been demarcated and registered at the Land Title Registry. There has been a long-standing land dispute between Maledjor and Amrahia. During one of these disputes, all the boundaries of Maledjor were used as evidence and so, when the people of Maledjor won the case, the boundaries were plotted and lodged at the Land Title Registry as the official boundaries of Maledjor (AM1, pers. comm., 2011). It was during the title registration process that the chief and elders were advised to seek authorisation from La, since the old survey records indicate that Maledjor was part of La rural lands. The boundary with Kantamanso has been contested over and over again. This particular boundary was demarcated during the colonial era with some of the pillars still in place (AM1, AM 2, pers. comm., 2011). During one of the litigations the old pillars were photographed and used as exhibits in court.

Political influence plays a critical role in determining the boundaries between Maledjor and Kantamanso. The investigator was informed (AM1, pers. comm., 2011) of how politics has been used to move the boundary from time to time, although the actual boundaries were demarcated during the colonial era. There was a time when a politician from Kantamanso planted cashew nuts across the boundary into Maledjor's land. When his party lost power, the people of Maledjor took the opportunity to destroy the plantation and moved the boundary to its original position (AM1, pers. comm., 2011).

The boundary with Oyibi has also been in contention. Oyibi, which is a Nungua village, sold Maledjor's land to Valley View University (AM1, pers. comm., 2011). When the elders of Maledjor protested, the University administration decided to compensate them. Valley View has been operational for over ten years and yet the documentation for the Maledjor lands has not been regularised (AM1, pers. comm., 2011).

The elders (AM1, AM2, pers. comm., 2011) testified as to the importance of registering their boundaries at the Land Title Registry. The practice prevents people who buy from illegal sources from getting registered title. People who have bought Maledjor land from illegal sources cannot get their titles registered and have to contact the Chief and elders of Maledjor for re-negotiation and the correct documentation before they can register their titles (AM1, AM2, pers. comm., 2011).

6.3.4 *Agriculture to residential use*

Maledjor was formerly agricultural land but has now been planned for residential use. The planning was carried out by the Tema District Assembly which formerly was responsible for Maledjor. Maledjor has been placed under Adenta Municipal Assembly in the recent demarcation of Assemblies (AM 2, pers. comm., 2012). When questioned about their feeling about the conversion of their agricultural fields into residential areas, the indigenes (AM1, AM 2, AM3, pers. comm., 2012) said areas around the village were not conducive to farming due to crop theft as well as the fact that the land is not as productive as it used to be. Land sales enable indigenes to get capital for other ventures (AM2, pers. comm., 2011).

6.3.5 *Land bank*

The Chief and elders of Maledjor have no plans of creating a land bank for future generations. There are lot of litigations relating to land (AM1, AM2, AM3, pers. comm., 2012). They claim that if they do not sell, their neighbours will not give them peace: “If you leave the land you have no peace. My own children sell, my nephews sell, and my brothers are also selling” (AM1, pers. comm., 2012). The indigenes have very large backyards, which they hope to leave for their descendants. The Chief explained that they still have large tracts of land which they would like to lease to estate developers or large organisations so that they can obtain income from ground rent (AM1, pers. comm., 2012).

Most of the indigenous youth, on the other hand, think that the elders are trying to sell all the land before they die. They fear that if they do not take part in the selling now, thereby investing in their future, there will be nothing left for them but the waterlogged areas that are not suitable for housing (AM4, pers. comm., 2012). The youth of the area are of the view that people from outside are selling and making

fortunes out of their land. They gave instances (AM3, AM4, pers. comm., 2012) where people from Kantamanso and Oyibi have sold Maledjor land while the elders looked on powerless. The youth (AM3, AM4, pers. comm., 2012) have been given land but they have no money to build unless they sell portions of the land: “Our uncles sold land to develop their big houses and businesses; we should do the same to build for our children before the land is all gone” (AM3 and two other youths, Panel discussion, 2012). This unplanned discussion took place while the researcher gave them a ride to Adenta.

6.3.6 *Litigation*

“I go to court almost every day, at least three times in a week” (AM 1, pers. comm., 2012). The Chief narrated how his brothers teamed up with their cousin (his father’s nephew) and sold 453 acres of land. The case is still pending in court. Maledjor has litigated over boundaries with all her neighbours. The Chief revealed that the elders of Oyibi informed him a few days ago that his children have crossed their boundary and sold part of Oyibi land. About two months prior to my interviews, Maledjor won a boundary dispute case against Amrahia. Currently the major boundary dispute is with the people of Kantamanso (AM1, pers. comm., 2012). Besides these external litigations, there are illegal sales by some of the Chief’s family members; they also go to court (AM1, pers. comm., 2012). Majority of the leaders of Maledjor (AM1, AM2, pers. comm., 2012) think that the Ghanaian Government is not doing enough to address the issue of boundary litigation between different communities. They assert that government should do more to ensure the demarcation of traditional boundaries in the interests of peace and development (AM1; AM2, pers. comm., 2012). The good work started by the colonial authorities has been abandoned by post-independent Ghana but should be continued in collaboration with relevant traditional leaders (AM1, pers. comm., 2012). The leaders also propose (AM1, AM2, pers. comm., 2012) strict enforcement of building laws, especially the granting of building permits with all documents scrutinized. This, they think (AM1, AM2, pers. comm., 2012); will reduce illegal land sales, and its subsequent time-consuming litigations. They applauded land title registration and its positive contribution to reduce illegal land sales but thought a lot more could be done by the government to improve land delivery (AM1, AM2 pers. comm., 2012).

6.3.7 *Dispute resolution*

Most land disputes in Maledjor are settled in court, although the Chief thinks the courts are expensive and time consuming. The formal courts are usually far removed from the community and do not favour a particular litigant which can be the case in customary dispute resolution committees (AM2, pers. comm., 2012). The Chief of Maledjor (pers. comm., 2012) asserts that the complexity of land disputes is such that the courts are a better option for land dispute resolution in Maledjor. The complex social networks make it difficult for dispute resolution committees to be objective.

6.3.8 *Land records*

The Chief of Maledjor does not keep any land records. Purchasers are advised to register their titles with the Lands Commission. The Chief claimed that his signature has been forged by some family members. This came to light when he challenged a developer to produce documentation in support of his land purchase which was purported to have been sold by the chief (AM1, pers. comm., 2012). The Chief intends to establish an office, employ qualified staff and start keeping land records when the land litigation cases subside (AM1, pers. comm., 2012).

6.3.9 *Partnerships with land agencies*

The District Assembly planned the layout for the area. However, the haphazard sales sometimes do not conform to the designed layout and the District Assembly is trying to monitor and enforce strict adherence to the layout by regular visits and monitoring of new development in the area (AM1, pers. comm., 2012). The office of Land Title Registry is also doing well by directing all those who want to register their land, but have acquired such land from the wrong persons, to the Chief, for ratification before registration. However, there are many people who do not have building permits but manage to develop land illegally. The illegal developments pose a challenge to the ability of the Municipal Assembly to deliver on infrastructural development. Subsequently, there is inadequate urban infrastructure in the area while sanitation is also a major problem (AM1, pers. comm., 2012).

6.4 Teiman

Teiman is a town near Oyarifa on the Accra – Aburi road (Figure6-2). A Krobo named Tei, whose sister married from La, first inhabited Teiman. He joined his sister at La and later moved from La and settled at the present day Teiman (AT1, pers. comm., 2012).

Teiman shares boundaries with Pantang, Oyarifa and Adenkrebi (AT1, pers. comm., 2012). There is no boundary dispute with any of her neighbours. The investigator was, however, told (AT1, pers. comm., 2012) that a few years ago, the people of Brekuso (a town in the area) claimed they had found, in their archive, a document indicating that their forefathers gave the land to the people of Adenkrebi about 300 years ago and that their boundary extended to the lands of Teiman. There were some disturbances between the two communities but the problem has been resolved amicably. Teiman has surveyed all its lands and registered them with the Land Title Registry (AT1, pers. comm., 2012).

6.4.1 *Land for indigenes*

Teiman is part of La stool lands, and so the caretaker chief is answerable to the Chief of La. However, there are five main families: Manlewe, Agbawe, Kpobiwe, Abese and Abafuo that manage family lands in Teiman. Each family head is responsible for managing its land and proceeds (AT1; AT2; AT3, pers. comm., 2012). During one of my visits, there was a panel discussion with leaders from all these families. The leadership cut across generations, from young adults to very old members and they seemed to agree on many issues.

When a young man marries, he goes to the elders with drinks and a token amount of money and he is shown a portion of the family land where he can settle (AT1; AT2; AT3, pers. comm., 2012). The drink and money are just symbolic and demonstrate to the rest of the community that the individual has officially been assigned that portion of land. Libation (a ritual of pouring liquor as an offering to the gods or in memory of ancestors) is poured to ask for blessings for the young couple (AT1, pers. comm., 2012). Young women may be given land to build if their mothers have not been able to do so (AT1; AT2, pers. comm., 2012). Such buildings remain the property of the family (AT1, pers. comm., 2012).

6.4.2 *Land delivery for strangers*

Strangers, both men and women access land from the various families. There is no discrimination based on gender. The criteria is the ability to pay, thus preference is given to those who have their money ready (AT1; AT2, pers. comm., 2012). Strangers started moving into Teiman in the mid -1980s in search of cheap land for building purposes. There was not enough room in Accra for everybody. The right acquired by a stranger is leasehold, which is renewable by the lessee or his/her dependants (AT1; AT2, AT4; pers. comm., 2012).

Prior to the influx of strangers, the area was predominantly used for agriculture and hunting of wild animals. The indigenes now have to look for other avenues to support themselves. Most of them have taken to small-scale trading and casual labourers for the construction industry.

The Government has not acquired land compulsorily in Teiman. Provision is made for schools, clinics and other public spaces as per the design layout (AT1, pers. comm., 2012). When the District Assembly needs any of these sites they have to negotiate with the land-owning family and agree on compensation (AT1, pers. comm., 2012). All proposed roads and public spaces are reserved for the District Assembly (AT1, pers. comm., 2012).

6.4.3 *Importance of customary tenure*

Is customary tenure relevant? Customary tenure, if managed well, will lead to proper use and management of land (Teiman Forum of Elders, 2012). There will be fair distribution of land and its benefits for the whole family if members can come together and agree on what to do with their land. There are some instances, where individual family members, because of greed, sell land and use the proceeds for their own benefit (Teiman Forum of Elders, 2012). This incites other family members to do the same creating confusion and numerous land disputes. In such instances, different family members can sell the same land to several people. An example was given of a family member who exchanged family land for a car and used the car for his personal benefit, creating a series of reactions from other members of the family (Teiman forum of elders, 2012). There was consensus that the only remedy for such

vices is for the family to come together as one (see 4.3 – African worldview) or else the problem will continue (Teiman Forum of Elders, 2012).

The current Chief of Teiman, Nii Manle Dzahaa I, was enstooled in 2008. When he assumed office, the elders ruled that all land transactions should pass through him, since he had been recorded at the Land Title Registry as the authentic custodian of Teiman land (Teiman Forum of Elders, 2012). No land transaction in Teiman can be legally valid or registered without the consent of the chiefs of La (principal signatory) and Teiman. Although this directive is to be adhered to, some people carry out land transactions without the knowledge of the Chief (AT1, 2012; Teiman Forum of Elders, 2012). Those who engage in such transactions and want their land rights registered at the Land Title Registry are referred back to the Chief for him to append his signature; otherwise, their documents are not processed. However, some people do not process their documents through the Land Title Registry before they start building. Most of these cases lead to confrontation with other family members when the purchaser starts the development (AT1; AT2; Teiman Forum of Elders, 2012).

6.4.4 *Relation with government institutions*

The leaders of Teiman assert that government land institutions should recognise the existence of family heads and traditional leaders (Teiman Forum of Elders, 2012). They argue that even though every member of the family is co-owner of the land, elders are elected to act on behalf of the families (Teiman Forum of Elders, 2012). They argued that when an individual approaches an institution to plan an area, the planning authorities should seek the consent of the elders concerned. “When they do not do that, it creates problems” (AT2, pers. comm., 2012).

6.4.5 *Use of professionals in land delivery*

Teiman, unlike Ogbojo, does not have specific land professionals that work in the area. They engage any private planning and survey practitioners that they can afford, for their layouts and other land survey works. Most of the time they enter into agreements where a percentage of the surveyed plots is given to the surveyors after the work has been done in lieu of payment (Teiman Forum of Elders, 2012). Government assistance in the area of planning would go a long way in ensuring

orderly development (Teiman Forum of Elders, 2012). Each family hires a surveyor when they need one (AT1, 2012). The community elders agreed that it will be beneficial to have a good survey firm working in the area for consistency and continuity rather than everybody or family working with whoever they can find (Teiman Forum of Elders, 2012).

The family leaders work closely with the Office of Administration of Stool Lands (OASL). OASL is a public establishment mandated by the Constitution of Ghana to collect and disburse stool land revenue (see 7.2). The elders assist OASL in distributing bills for the collection of ground rents. They, however, complained about the sharing ratio of the ground rents, arguing that the percentages are not fair and that the government takes the greater part of the money and yet they do not see any government-led development in their area (Teiman Forum of Elders, 2012).

6.4.6 *Record keeping*

Land records in Teiman are kept in drawers in hard copy. A copy of every indenture signed by the Chief is kept securely in a drawer. The Chief disagrees that improper record keeping may result in double sales: “that is deliberate, you should be aware of every land sold” (Dzahaa I, pers. comm., 2012). The elders argued that it is not feasible for everybody to register his or her title at the Land Title Registry, because not everybody can afford it (Teiman Forum of Elders, 2012). Therefore, it is up to the individuals and the family heads to keep land documents safely, however those who can afford it are encouraged to register their land rights with the Land Title Registry.

6.4.7 *Dispute resolution*

The Chief and elders meet every Tuesday and Friday to deliberate on the progress of the town. Most decisions are taken based on consensus but where necessary, a simple majority rule is applied. During these meetings, time is allotted for the settlement of disputes in the community. With the influx of strangers in Teiman, the investigator asked whether strangers have representation among the community elders, and if not, how strangers can have confidence in the impartiality of the leaders? It was revealed that strangers have no representation on the Council of Elders, but the forum argued that most strangers have confidence in them and always

brought their disputes to be settled (Teiman Forum of Elders, 2012). A stranger (AT5, pers. comm., 2012) who gave instances of disputes involving strangers that had been amicably settled by the Council of Elders confirmed this: “Most cases involving strangers and indigenes are won by the strangers. ...the Council is impartial” (AT5, pers. comm., 2012).

6.4.8 Urbanisation

Teiman has benefited from rapid urbanisation. The town is developing at a very fast rate and commercial activity is on the rise. However, the increase in population has also brought with it vices that were formally unknown, such as burglary in the town (AT1, pers. comm., 2012). The Police have been instructed to patrol the town from time to time (AT3, pers. comm., 2012). Community members are also encouraged to form watchdog committees, to monitor what goes on in their vicinity (AT1, pers. comm., 2012). The watchdog committees comprise indigenes and strangers (AT2, pers. comm., 2012). There is a cordial relationship between indigenes and strangers (AT5, pers. comm., 2012). There have not been any clashes between the two groups in Teiman (AT1; 2012; AT5, pers. comm., 2012).

6.4.9 Land bank

“There is no way land can be kept for future generations; even in our time land is becoming scarce” (AT1, pers. comm., 2012). Their only hope is that when these leases expire, they will have the opportunity to renew them and make some money” (AT2, pers. comm., 2012). There is an urgent need to find alternative means of sustaining the indigenous communities. There are also some families, who have entered into agreements with estate agents for shares in developing rental housing. Thus, if such arrangements are fulfilled the families involved will be getting regular income (AT2, pers. comm., 2011).

6.5 Ogbojo

Ogbojo is a fast developing peri-urban area in Accra situated very close to East Legon, a first-class residential area in Ghana. Land in Ogbojo is in high demand because of its geographic location, near renowned educational institutions, such as the University of Ghana, the Institute of Professional Studies and the Institute of Local Government Studies.

The founder of Ogbojo was Okotse Adjah (also called Torgbortse Adjah), who found the land unoccupied through hunting and searching for medicinal herbs around 1730 (AO1, pers. comm., 2011). Nii Okangfio later joined him and together they established Ogbojo village. The descendants of these two men claim ownership over Ogbojo land (AO1, pers. comm., 2011). Consequently, the Anahor and Dzrase families claim absolute right over Ogbojo land. Although they admit they are originally subjects of La, they assert that the La stool has no proprietary title right, or interest whatsoever in Ogbojo village or lands (AO1, pers. comm., 2011). This claim led to protracted litigation over Ogbojo land.

On January 18, 1994, the La Mantse issued a writ of summons and a statement of claim against the chief of Ogbojo, and placed a perpetual injunction restraining the chief and elders of Ogbojo from disposing of land without the approval of the La stool. The High Court dismissed the case because the people of Ogbojo and their ancestors occupied the land as their property before 1865, without any interruption from the La stool. The land has been treated as family land for all these years. The judge asserts that the La stool is putting up claims for the Ogbojo lands because of the commercial value the land has now gained (Tsuru III & Sai, 2010).

The La stool filed an appeal in the Court of Appeals and on the 17th of January 2008, the Court of Appeal set aside the judgment of the Trial Court because Ogbojo lands are part of La rural lands, which belong to the La Stool (Tsuru III & Sai, 2010).

The Chief and people of Ogbojo, led by the current Chief, Joseph Nii Torgbor Obodai, appealed to the Supreme Court and on the 15th of July, 2010, the court ruled in their favour.

It must be stressed that it is the allodial title that is in issue and therefore on the facts of this case, clearly the position is that either the appellant or the respondent has that title. ... It must also be stressed that is the respondent's case that apart from grants to La citizens no form of grant of La lands can be made to a stranger except by the La Stool. Quite clearly where the alleged allodial owner as here, sits down and watches grants of virgin land to strangers without timeous objection such a

person cannot seriously claim an allodial title to the land in question,
(Tsuru III & Sai, 2010, 7).

This is a landmark case because customary law asserts that long and uninterrupted use by member of a stool does not extinguish the allodial rights of the stool in favour of the occupants (Ollennu, 1962). This case demonstrates that if members of a stool assert claim to land as belonging to them absolutely, and refuse to recognise the allodial title for more than 12 years (the Limitation Decree [NRCD54], 1972), the allodial owners may lose their title. The La Stool lost the case because they stood by and never raised any objections to the alienation of Ogbojo lands to strangers, neither did they make any grants of their own in Ogbojo. “Long and uninterrupted possession, occupation, coupled with the incidents of ownership and occupation together with the overt act of ownership are crucial in any determination between rival claimants of allodial title ... where one of the claimants is a head-stool and the other a sub-stool” (Tsuru III & Sai, 2010: 59). This landmark ruling is likely to have enormous effect on stool lands throughout the country.

Ogbojo is bounded to the south by Mpehuasem on the north by Ashalley Botwe and Sraha on the west by Madina (Nkwantanang). It has no boundary disputes with any of its neighbours. The traditional leaders have lodged the Supreme Court ruling with the Title Registry to protect their land (AO1, pers. comm., 2011). The rapid urbanisation of Ogbojo is attributed to the relocation of people from Nima at Madina in the 1970s during the construction of the Nima Highway (AO1, pers. comm., 2011) and other urban infrastructure into its vicinity.

6.5.1 Land allocation

The people of Ogbojo practice patrilineal inheritance. Most indigenes live in their fathers' home. Urban sprawling of Accra reached the village, mainly as a result of the resettlement of the displaced community during the construction of the Nima Highway. Agricultural lands were converted to residential use and a residential layout developed. Indigenes were allotted plots to build their own houses and in return they paid ‘drink money’ to the elders of the community as their indication of appreciation (AO1, pers. comm., 2011). The ‘drink money’ was a token and also served as evidence that a particular parcel of land had been given to specific

community members (AO2, pers. comm., 2011). “We were made to pay the ‘drink money’ because the elders claimed it was part of our culture; some parents paid for their children who could not pay or did not want to pay” (AO4, pers. comm., 2011). Both males and females were given land on an equal basis with no discrimination between genders (AO1, pers. comm., 2011).

Most of the youth sold their plots to strangers and returned to their *fathers’ houses* within a matter of months (AO1, pers. comm., 2011). The sites for the indigenes were on the outskirts of the town and they were advised not to sell their plots, but some sold their land and went into transport business, which they could not sustain (AO1; AO2, pers. comm., 2011). Skill training and alternative ways of making a living is vital for the youth especially those who are not well educated, since all the farmland is being converted to residential use (AO1; AO2, pers. comm., 2011).

6.5.2 Land reserves

There are pockets of land left for future generations and the elders are doing all they can to protect them. One strategy for doing this, the researcher was told (AO1, pers. comm., 2011), is to raise the price of land. However this is not working: “Whatever you say people should pay for land here, they are ready to pay, the price does not scare them. People are desperate to build and live in Accra” (AO1, pers. comm., 2011).

“The government took some land without compensation and the purpose for which it was taken is being abused. Strangers are taking over the land so we petitioned the government through our lawyer and they saw that we were right” (AO1, pers. comm., 2011). The government has promised to release some land to the community, and it is hoped that this can be conserved for future development (AO1, pers. comm., 2011). In addition, a large tract of land has been given to estate developers for rental residential development. The land has been given as the family’s share of the investment. It is anticipated that upon completion the families will receive cash dividends regularly to supplement their income. These investments will benefit future generations (AO2, pers. comm., 2011).

6.5.3 *Distribution of land proceeds*

The elders of Ogbojo, had agreed, initially, to divide all land proceeds into three, for the land-owning families, infrastructure development and investments in the town respectively (AO1, pers. comm., 2011). This arrangement was aborted when some elders insisted that all moneys should be shared (AO1, pers. comm., 2011). An elder (AO2, pers. comm., 2011) explained "... keeping some money for infrastructure development is laudable but in the absence of regular channels of accountability, and lack of visible signs of infrastructural development, it is difficult to trust authority" (AO2, pers. comm., 2011).

6.5.4 *Government involvement in development*

The government and the District Assembly is doing very little to help in terms of developing the area. The elders have made available, land for the development of a Polyclinic but response from government has not been encouraging (AO1; AO2, pers. comm., 2011).

6.5.5 *Record keeping*

The chief started by keeping record of land transactions in a notebook. Hard copies of indentures are also kept at a safe place (AO1, pers. comm., 2011). However, when he was busy fighting litigation, the records were not kept up-to-date (see 8.4.1). Currently Ogbojo depends on the Lands Commission records, since purchasers are encouraged to register their plots with the Land Title Registry. Thus, those who do not register their titles with the Lands Commission are not captured in the records (AOS, pers. comm., 2011). The land surveyor for the area also keeps some of the records (AO1; AOS pers. comm., 2011).

6.5.6 *Dispute resolution*

There is a committee of 23 elders who meet every Tuesday to settle disputes. Everybody living in the community can approach any of the elders who live among them, or they may appear before the committee. The appearance of disputants before the committee is an expression of confidence in the committee (AO1, pers. comm., 2011). In the unlikely event that a disputant does not agree to the settlement reached, he/she can take it to the formal courts (AO2, pers. comm., 2011).

Sometimes encroachment and trespass cases are sent to the police, but the police are not straight forward: “to put it plainly they are corrupt” (AO3, pers. comm., 2011). The Committee of Elders (AO3, pers. comm., 2011) settles most disputes.

No violent dispute has erupted between indigenes and strangers in Ogbojo (AO1; AO2; AO3; AO5; pers. comm., 2011). However, some occurrences are worrying to the elders. Some of the disturbing incidences between indigenes and strangers arise from:

- renaming of new areas e.g. ‘Nanakrom’, ‘New Ogbojo’, ‘Shalom Town’ etc. There is a strong objection to these names by indigenes (AO3; AO5, pers. comm., 2011).
- political party issues: An incidence was cited where people from a particular tribe wanted to replace an indigene as chairperson of a political party in the area because they claimed he was not doing his work well (AO1, pers. comm., 2011). Timely intervention of the elders saved the situation from becoming violent.
- sale of land by indigenes without the right documentation (AO1, pers. comm., 2011).

6.5.7 Customary institutions

Traditional leadership is closely linked with land management. An example is given of a neighbouring community, Nkwantang, whose land is exhausted. The chief is dead and no one wants to take up the position because there is no land to generate revenue for development (AO1, pers. comm., 2011). The Chief of Ogbojo is of the view that if care is not taken to preserve land for the various traditional areas, the issue of culture and the whole institution of chieftaincy will disappear.

6.6 New Ningo

The people of New Ningo moved to their current settlement from Great Ningo. Nene Teye Djangmah VIII ruled Great Ningo from 1907 to 1917. In 1917, a civil war broke out in Great Ningo and he relocated and settled in the present day New Ningo. Some families from Great Ningo joined him and the settlement developed. Nene Teye Djangmah VIII became the first ruler of New Ningo under the name Teye

Djangmah I, and ruled from 1917 to 1958 (ANN1, pers. comm., 2011). The current chief of New Ningo is Nene Teye Djangmah IV.

Nene Teye Djangmah I, of New Ningo, belonged to the Loweh Adainyah family, which is the royal family of both Great Ningo and New Ningo (Djangmah IV, pers. comm., 2011). The Adainyah clan, as at the time of the interview (2011), had five families in New Ningo, who are the land owning families of New Ningo. However, there are other clans in New Ningo, who came during the time of Nene Teye Djangmah I, and were given land to farm (Djangmah IV, pers. comm., 2011). All land in New Ningo, however, belongs to the Loweh Adainyah family and the chief is the overall head (Djangmah IV, 2011; ANN1, pers. comm., 2011).

Indigenes who did not originate from the Loweh Adainyah family do not own land. They only have usufruct rights (ANN1, pers. comm., 2011). They were given land to farm out of the benevolence of the chief. Hence, anytime the land is required by the chief, he can retrieve it and compensate those who have farmed on the land (ANN1, pers. comm., 2011). To answer the question as to why indigenes, other than members of the Adainyah family, do not have rights to the land their forefather have farmed for close to a century, the respondent answered, “land in Ningo is family land. Before the formation of New Ningo the land was part of the Great Ningo stool lands. Nene Teye Djangmah I, took control of the land, and so all land in New Ningo, belongs to the royal family. All other settlers are granted farming rights and when land is required they are compensated” (ANN1, pers. comm., 2011). Among the other families who joined Nene Teye Djangmah I, were, Amamosi, Asreh, Ohenease, Saunyah, Weghobom and Kabigwe (ANN1, pers. comm., 2011).

6.6.1 *Land acquisition by indigenes*

Land can be acquired through various means, but the best procedure is through the traditional leader. Inheritance, in New Ningo, is patrilineal. Males get land from their paternal families: from fathers, uncles or grandfathers ((ANN1; ANN2, pers. comm., 2011). The traditional leader should be informed about land transfers within the family (ANN2, pers. comm., 2011). Women do not have the same rights as men (ANN4, pers. comm., 2011). “We seriously discriminate against women. I will not share my land with my sister. I will not give her. However, if her child has money, I

may give her one plot to build a house. We give money, and not land, to women, because we inherit paternally” (ANN1, pers. comm., 2011).

6.6.2 Land acquisition by strangers

Non-indigenes access land through sale, gift or settlement. There is no discrimination between men and women in the acquisition of land; the only thing that determines access is one’s purchasing power. Currently all monies accruing from land sales are being use to renovate the palace (ANN1, pers. comm., 2011). A number of rich people are attracted to New Ningo because of the beautiful beach, the peaceful atmosphere in the town and the good roads (ANN2, pers. comm., 2011). Any stranger who needs land will follow the following procedures:

- A bottle of whisky or schnapps and an envelope (containing money- the amount depends on the size and intended use of the land) is presented to the land-owning family (the royal family).
- Negotiate with the chief and agree on a price.
- The chief compensates the farmer.
- Preparation of indenture approved by the traditional council.
- The documents may be sent to government agencies for registration.

6.6.3 Planning and surveying

The traditional leaders bear the cost of planning and surveying. They (ANN1; ANN2, pers. comm., 2011) attest to the advantages of planning and surveying an area before selling, but bemoan the cost of these processes in their area. They narrated an instance where a layout was designed in areas, which were previously leased because there were no plans to indicate which areas were encumbered. However, due to the cost involved in preparing and surveying these plans some areas are sold without plans (ANN1; ANN2, pers. comm., 2011). The key respondent argued that this does not create any problem now, since they use the same surveyor and elders to demarcate the plots. Problems, however, arise if unauthorized persons sell the land. In such a case, the surveyor and the Committee of Elders may not be aware of the previous sales (ANN1, pers. comm., 2011). The current surveyor for the town is related to the royal family and devoted to orderly spatial development of the town (ANN1, pers. comm., 2011).

6.6.4 Government involvement

There is virtually no visible government involvement in land administration in the area. The community bears the cost of all activities in land administration. Politicians do not have any stake in land administration in the area (ANN1; ANN2, pers. comm., 2011). It is outside their domain (ANN1, pers. comm., 2011). Government land agencies are completely absent in the area. There has not been active engagement with the Administrator of stool lands: “I have been installed for six years but they have not come to me” (Djangmah IV, pers. comm., 2011). A large tract of land was acquired by the Government of Ghana through compulsory acquisition for a shooting range. The chief and elders of New Ningo assert the land is under-utilised and have initiated a process to reclaim it. They want to put it to good use to help develop the town (ANN1; ANN2, pers. comm., 2011).

6.6.5 Record keeping

Land records in New Ningo are kept under lock and key. The key informant (ANN1, pers. comm., 2011) has reservations on keeping land records in digital forms but he acknowledges the importance of land records. He believes computer-based information can be corrupted, hacked or tampered with. He insists the best and most reliable way of keeping land records is to keep them in safes (ANN1, pers. comm., 2011). “I will not keep computerized records, analogue is better. My wife always helps in keeping the records in the safe” (ANN1, pers. comm., 2011). Previous leaders did not keep any land records and that has created some problems for the present administration. A new layout was created in an area that had already been sold (ANN1, pers. comm., 2011).

6.6.6 Dispute resolution

Most land disputes are settled in the palace (ANN1, pers. comm., 2011). Both strangers and indigenes use the traditional dispute resolution mechanism. The chief is called as a witness to all land issues that go to the formal courts. He had made it clear to the community that he will not be ready to stand as a witness to any dispute that does not pass through his palace before being taken to the formal courts. Most disputes arise as a result of illegal sales by the land owning community and their inability to give proper documentation to buyers.

A stranger who has acquired land legally from the chief, told me he had been stopped from developing his plot by some people who claimed they had been farming on that parcel of land (ANN5, pers. comm., 2011). The family claims ownership of the land, arguing that, their ancestors farmed in the area for many years and that the chief has no right to take it from them (ANN3, pers. comm., 2011). The chief instructed the stranger to proceed with his development because the family in question did not own land in New Ningo. He advised him to seek police protection if he felt threatened. The stranger went to the police, they inspected his document, and agreed that it is accurate for development. However, the stranger has not developed the land for fear of creating enemies in the community he intends to settle in, even before he moves into it (ANN5, pers. comm., 2011).

6.6.7 Land bank

Currently, indigenes have a special place reserved for them and they acquire land almost for free. However, there has not been any provision made for future land use for indigenes. The chief made mention that he and his elders would give it a thought. Meanwhile he is certain that all strangers will have to re-negotiate their leases when they expire (ANN1, pers. comm., 2011).

6.7 Ablekuma-Afienya

Ablekuma-Afienya is a peri-urban area about 20 km from Tema on the Tema-Akosombo Road. Ablekuma-Afienya is strategically placed because of its proximity to Accra and Tema and the transportation networks that connect it to these two important cities. People from Tema are rushing into the area to buy land. The main water supply lines for Accra and Tema from Kpong Water Works pass through the area. Ablekuma-Afienya shares boundaries with the Tema Compulsory Acquisition area, which was used in the development of Tema Township.

The indigenous inhabitants of Ablekuma-Afienya trace their roots to Ada, from where their ancestors migrated and settled in Prampram. Ablekuma-Afienya was used as a farming settlement. However, the area is fast losing its agricultural use to real estate development (Land Use Planning Management Project [LUPMP], 2010) due to its location (AAA1, pers. comm., 2011). Ablekuma-Afienya is in the Dangme

West District of the Greater-Accra Region with the District capital - Dodowa (see Figure6-2).

6.7.1 *Land Acquisition for Indigenes*

The people of Ablekuma-Afienya, like other Adangmes practice patrilineal inheritance. Sons inherit from their fathers but daughters can only use the land of their parents or other male relations, but cannot bequeath it to their children (AAA2, pers. comm., 2011). Areas around the village have been reserved for the use of indigenes. Sons, who are of age, are given part of the community land for farming or construction of their dwellings (AAA1, pers. comm., 2011). The chief and elders insist that for some time to come, farming will continue to be the major occupation of the children who could not go to school (AAA1; AAA2; AAA3, pers. comm., 2011). They indicated that recently, there had been a lot of pressure from outsiders for indigenes to sell their land. However, they would endeavour to reserve some areas for their children (AAA1.). Funds raised from land sales are used for the benefit of family members (AAA1, pers. comm., 2011).

Girls who are unmarried help their families on their farms but those who are married to men outside the community and whose husbands are ready to live and farm in the village are given farm land to use and also to build on (AAA4, pers. comm., 2011). The land however, remains the property of the community and no one is allowed to alienate it (AAA1, pers. comm., 2011).

6.7.2 *Land for Strangers*

Strangers started moving into Ablekuma-Afienya in the 1990s because of the constant pressure for residential areas by an increasing number of people from Tema. The elders decided to collaborate with the District Assembly to develop a residential layout. The designed layout was surveyed and copies of plans were kept at the District Assembly and with the chief (AAA1, pers. comm., 2011).

A prospective buyer is shown available plots to make a selection. The buyer then confirms at the District Assembly whether the chosen site is vacant and available for the intended purpose. The individual then returns to the elders to negotiate the price and agree on method of payment. The prospective buyer is then given a note to be

sent back to the District Assembly. At the District Assembly, the purchaser is given a date to return to and collect the documentation for the land and put in application for building permit. The process ensures that disputes are minimised. Collaboration with the landowners to lease out land was a special arrangement with a particular professional at the planning office (AAA3, pers. comm., 2011). However, it worked reasonably well: “There are no disputes on the lands here, I bought some for about ten people, most of whom have not developed, yet, the plots are there, intact” (AAA5, pers. comm., 2011).

There is no discrimination based on gender when strangers wish to acquire land; whoever can afford the offering price can lease land. Residential leases for Ghanaians are for 99 years and agricultural and commercial leases are limited to 50 years. All leases may be renewable (AAA1, pers. comm., 2011).

Strangers who were interviewed indicated that friends introduced them into the area. They moved into the area because it was peaceful and utilities such as electricity and water were readily available and, more importantly, the leaders worked together (AAA5; AAA6, pers. comm., 2011). The cooperation of the leaders is important because it is unlikely that one of them would turn around and claim ignorance of the purchase or resell the same plot. There is public transport to Tema, Ashiaman or Accra at all times of the day. One respondent moved to the area because he said he had a house in Tema. Land in Tema is very expensive, but he also explained that, during the revolutionary era of the early 1980s, all those who had more than one residential site within the Tema Acquisition had the extra buildings confiscated by the military regime. Besides, he claims it is easier and cheaper to acquire land at Ablekuma-Afienya than in Tema (AAA5, pers. comm., 2011).

6.7.3 Land records

The chief keeps copies of all indentures. The traditional leaders keep a notebook with the names and details of land right holders. The District Assembly also keeps records of the land rights holders and the allodial owners before granting building permits.

6.7.4 Land disputes



Figure 6-3: Flooding in Ablekuma - Afiencya

There were no major land disputes in Ablekuma-Afiencya at the time of the fieldwork. A visit to some areas of Ablekuma-Afiencya during the rainy season, however, revealed that there is serious land flooding as indicated in **Error! eference source not found..** This can only be avoided if the District Assembly and other relevant government agencies provide the necessary infrastructure.

6.7.5 Dispute resolution

The chief and his elders meet regularly to resolve disputes that arise in the community. They assert that the transparency among the traditional leaders has maintained peace in their community (AAA1; AAA2, pers. comm., 2011). Illegal sales by indigenes are not evident in the area currently. This is attributed to the fact that indigenes have enough land for their use and every indigene is aware that land can only be transferred to outsiders through the family heads and the traditional leader.

6.8 Amrahia

Amrahia is a peri-urban town in the Adenta District Assembly of the Greater Accra Region of Ghana. It is situated along the road between Accra and Dodowa and very

close to the Valley View University. It is developing very fast because of its proximity to the University and the good road network in the area. Amrahia shares boundaries with Maledjor, Damfa, Amanforo, Oyarifa and Kantamanso. There is a dispute on the boundary with Kantamanso (AA1, pers. comm., 2012).

The indigenous inhabitants of Amrahia, originally hailed from La. The chief of Amrahia is usually the Head of Nii Amoah Okomensa family. This family comprise three groups, Asirifi, Amoah and Buadu lineages. Chieftainship in Amrahia rotates between these lineages (AA1, pers. comm., 2012). The people of Amrahia believe they are the same people as the indigenes of Maledjor, however, they claim their land is not stool land but family land (AA1, AA3, 2012). Members of the Amrahia royal family who were resident in La, at one time wanted Amrahia to be part of La stool lands but the move was resisted by Amrahia indigenes (AA1, pers. comm., 2012).

6.8.1 Planning and surveying

The design of the master plan of Amrahia was undertaken by the Tema District Assembly before the creation of Adenta Municipal Assembly, which now administers Amrahia. The land use in the area, was converted from agricultural to residential use, due to the pressure on land for residential purposes emanating from the expansion of Accra. “The Tema District Assembly assisted us in the design of the layout because they wanted orderly development in the area, however, the new Adenta District Assembly is not assisting us much because they complain about lack of resources” (AA2, pers. comm., 2012).

The team of land professionals who were instrumental in preparing the master plan are consulted from time to time in administering the design layout. The absence of professional surveyor(s) to monitor strict observance to the design layout after sale leads to some clients overstepping their boundaries and encroaching on the designed roads or adjoining sites as shown in Figure 6-4.



Figure 6-4: Extension of plots beyond corner beacons

6.8.2 Land acquisition

Indigenes acquire land from their family heads, in consultation with family elders. The land is given to male family members since inheritance is patrilineal. However, women in the family may be given land for building. Giving land to female members of the family is not mandatory (AA1, pers. comm., 2012). Initially, any member of the land owning family was free to find a buyer and sell part of the land. This procedure has, however, been stopped, to enable orderly development of land and to minimize disputes. Presently, land is centrally administered by the family heads and chief. The signature of the chief is required in all valid land transactions.

Strangers acquire land by leasing. The lease is 99 years and this can be renewed for further 45 years. There is no gender discrimination as far as land acquisition by strangers is concerned. Land is leased to whoever has money to pay for it (AA1; AA5, pers. comm., 2012). Upon full payment of the agreed price, clients are given site plans and indentures to enable them register at the Lands Commission.

6.8.3 *Disbursement of land proceeds*

There is no agreed formula for the distribution of land proceeds in Amrahia. Hitherto, whoever sells the land pockets the money. Out of his free will, he may give a percentage of the amount to other members of the land-owning family. Every family member is free to sell portions of the family land and inform the elders accordingly (AA1, pers. comm., 2012). The situation has been amended recently where each male member is given a number of plots to sell for their own use. The royal family has also decided to divide the land among the three royal lineages to enable each to manage the use of their land resources for the benefit of all members of the family (AA2, pers. comm., 2012).

6.8.4 *Land disputes in Amrahia*

There has been some unrest in Amrahia concerning land. There is an unresolved dispute on the boundary between Amrahia and Kantamanso. Parts of Amrahia land were leased to a farmer. While the lease had not lapsed, the same area was subdivided and leased to other people (AA5, pers. comm., 2011). The farmer was said to have abandoned the area for several years. He was an expatriate and never returned to his country, leaving the land vacant (AA2, 2010; AA1, 2012). However, when the vacant land was rezoned for residential use and sold to developers, friends of the farmer recruited '*land-guards*' to harass the developers (AA1, 2012). Most developers had to abandon their projects due to threats to life and property because of the dispute (AA5, pers. comm., 2011). **Error! Reference source not found.** hows some developments which were temporally brought to a halt.

At the peak of the land disputes and the operations of the *land-guards*, all disputes were taken to the police. The traditional dispute resolution committee was ineffective. The lease of the original farmer has expired but the family refused to renew it, saying the area had been rezoned for residential use and most of the land had been sold (AA1, pers. comm., 2012).



Figure 6-5: Abandoned projects in Amrahia as a result of land conflicts

6.8.5 Land bank

At the time of data collection, most land in Amrahia had been leased out leading to a shortfall in the supply of land to indigenes. This affirms Owusu's (2008) observation that traditional leaders responsible for land administration in peri-urban areas of Accra alienate land without taking into consideration the consequences to their communities. After lengthy negotiations with the government, compulsorily acquired land has been released to the community. The acquisition, which was for a dairy farm, has been underutilised for many years (AA1; AA3, pers. comm., 2012). The traditional authorities plan to give part of the released land for estate development and reserve a portion for indigenes' future use (AA1; AA2; AA3, pers. comm., 2012).

6.8.6 Land records

A computerised database is kept of all allocation. The database is managed by a member of the royal family. It is the official record of land transactions in Amrahia (AA1, pers. comm., 2012). The records in the database are reviewed from time to time by the traditional authority. In Amrahia, site plans are certified by the Regional Surveyor, which implies that records of these site plans are kept by the Surveying and Mapping Division of the Lands Commission.

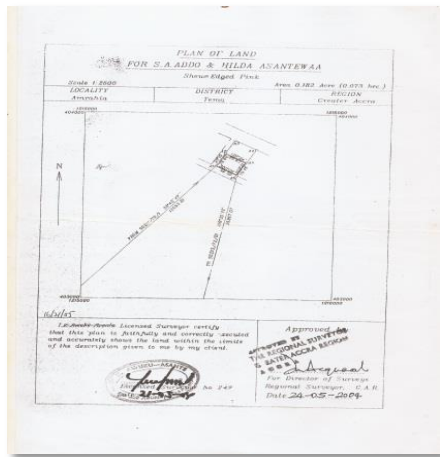


Figure 6-6: Cadastral site plan in Amrahia

6.9 Land holding in Kumasi traditional area

There are no family lands in Asante; all lands are stool lands. Four stools in the Kumasi Traditional Area administer land (KAM1, pers. comm., 2010). These are the only legitimate sources of land transfers. They are:

- Konadu Yiadom Stool (Queen mother of Asante [Asantehemaa] stool)
- Divisional Stools e.g. Asokore Mampong,
- Asantehene's wives' e.g. Boadi,
- Powerful gods (Abosomo) e.g. Duase.

Land transactions by family heads or sub-chiefs without the consent of the relevant stool are invalid (KAM1, pers. comm., 2010) since, in Asante, individuals or families do not own land. Similarly, sub-stools on their own cannot transact in land, since they are not officially recognised by the Asantehene (AM1, pers. comm., 2010). Sub-stools are established as internal arrangements to help divisional stools in their day-to-day administration (KAM1, pers. comm., 2010).

Indigenes have diverse rights in customary land. However, these rights are gradually disappearing because of various land transactions especially in peri-urban areas (Kasanga & Kotey, 2001; Ubink, 2008). This has been a source of litigation in areas, where, land users are not consulted on the intended land use changes and the

proceeds from land transactions are not equitably distributed (Kasanga & Kotey, 2001; Ubink, 2008). To minimize the effects of inequitable distribution of benefits from land transactions, the Asantehene and members of the Kumasi Traditional Council agreed on a formula to guide the disbursement of land and its benefits in the area (KAM1, pers. comm., 2010). The ratios are indicated in Table 6-1. These proportions may be in the form of shares in land or in the form of money.

Table 6-1: Disbursement of peri-urban land in Kumasi (Akrofi, 2012)

Beneficiary	Golden Stool	Local Stool	Chief	Elders	Usufruct	Community Development
Ratio	5/15	2/15	2/15	2/15	2/15	2/15

6.9.1 Asantehene's Land Secretariat (ALS), Kumasi

The Asantehene's Land Secretariat (ALS) is the management unit of all land within the Kumasi Division of the Asante Confederation. It is housed within the Manhyia Palace - the seat of government of the Asante state.

Traditionally, Asante chiefs are the custodians of all land within their jurisdiction (KALS1, pers. comm., 2012). The Asantehene, who is also the Paramount Chief of Kumasi Traditional Council, is the custodian of all land within the Kumasi. All land transactions with strangers and all commercial transactions require his consent (KALS2, pers. comm., 2012). Sub divisional chiefs are accountable to him. He has powers to deal with any chief who alienates land without his permission. Kyeremanten (1971) asserts that the Asantehene can deprive a sub-chief of his authority as punishment for misconduct; however, he must inform his clan chief at a public meeting before taking such action.

The prerogatives of a chief over land in Asante are:

- chiefs can give away land, which no indigene has rights in, as a gift in the interest of the community.

- chiefs may lease land to strangers. This is the main occupation of chiefs who have stool lands in peri-urban areas.
- chiefs are also called upon to testify and give consent to deeds of transfer to real property. A chief is entitled to a share of the proceeds accruing to the transferor.

The benefits derived from the chief's prerogative over land is used to meet the domestic and official commitments of the chief and help to maintain the dignity of the stool and bind the chief and community together (Kyeremanten, 1971) in the spirit of the African worldview. Progressive chiefs also use the proceeds from land for developing their areas. They use land to attract development to their areas. The Asokore Mampong Chief and elders donated a piece of land for the Kumasi Metropolitan Assembly to build a sub-office. With the completion of the office, a new Municipal Assembly has been proposed, to be housed, in the new offices at Asokore Mampong (KAM1, pers. comm., 2011). Thus, by providing land for the building of offices, Asokore Mampong has been elevated to municipal status (KAM1, pers. comm., 2011).

Some chiefs may, however, abuse their prerogative of land management resulting in litigation and retardation in development (Kasanga & Kotey, 2001; Ubink, 2008). Such chiefs act contrarily to the tenets of the African worldview (see 4.3). Kyeremanten (1971) observes that where chiefs have greater control in land management, there is less land litigation and greater political stability. In Asante, the oversight of the Asantehene and his power to expel corrupt chiefs (those who do not consider the interest of their subjects or consult their elders before alienation), serve as deterrent for bad administration as explained in section 6.9.2.

6.9.2 Old administration

ALS has a strategic role in land delivery in the Kumasi peri-urban Areas. All land rights holders interested in registering their titles with the formal system need to go to ALS for the Asantehene's endorsement of the Allocation Note received from the caretaker chief. The Allocation Note is then taken to the Lands Commission for the preparation of the lease, which is returned to ALS for Asantehene, and the caretaker

chief for execution. It is then sent back to the Lands Commission where the grantee signs his or her portion before registration. The flow process is shown in Figure 6-7.

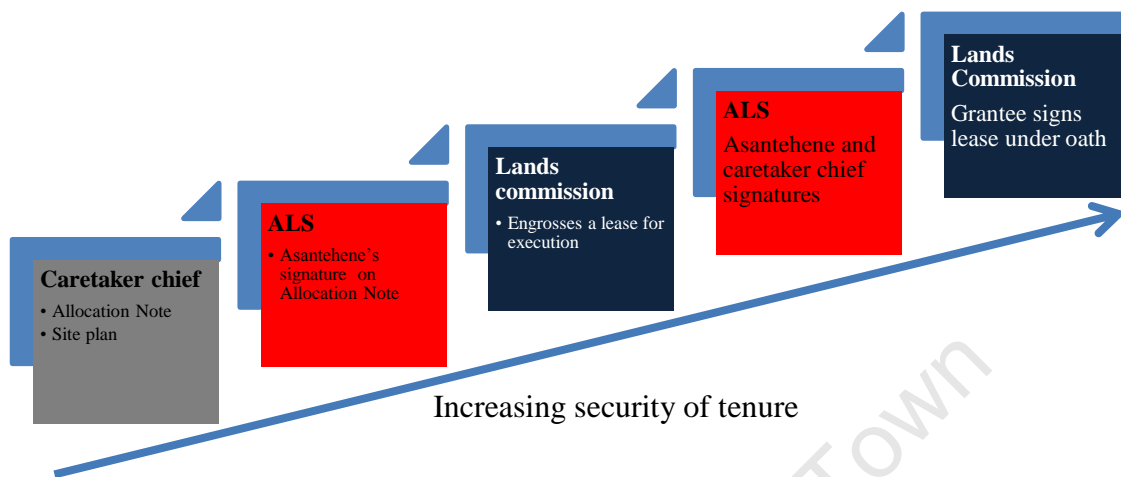


Figure 6-7: Process of customary land registration in Kumasi

Until the re-organisation of ALS in September 2011, the institution had been a major blockage in formal land delivery in the Kumasi Metropolitan Area. Among other things, the unit was plagued with inefficiency and corruption (KB2, pers. comm., 2010; KS1, pers. comm., 2010; LTR2, pers. comm., 2010). Among the complaints levelled against the old ALS administration were excessive billings, under-invoicing, delays in processing documents, gross disrespect for clients, and poor customer care (KALS1, pers. comm., 2012). It was frustrating to get anything done in the secretariat. Consequently, most people refused to register their land.

Information from ALS was a vital component of this research. However, after a series of unsuccessful attempts to get data from ALS, The idea was abandoned. A traditional leader described the secretariat as an 'iron curtain' impossible to penetrate (KALS3, pers. comm., 2012). Statistical data of lease applications from the case study areas were required to analyse the number of land allocations by the various chiefs against leases or land title applications. This was to substantiate or refute the perception that, the secretariat was a major hindrance to people who want to register their leases or obtain land title documentation.

On September 22, 2011, the Asantehene Otumfuo Osei Tutu directed the closure of the Asantehene's Lands Secretariat because of corruption. He ordered the Liaison Officer at the Secretariat, Asumadu Sakyi, to proceed on leave and hand over to Manhyiahene, Nana Kwasi Prempeh. The Manhyiahene was to be assisted by the Asokore Mamponghe, Nana Boakye Ansah Debrah, the Bantamahene, Baffour Owusu Asare Amankwatiah and the Akyempimhene Oheneba Adusei Poku (KALS1, pers. comm., 2012).

6.9.3 Asantehene's Land Secretariat's New Administration

The committee of Eminent Chiefs, who were professionals in their own right, put in place processes for the restructuring of ALS. Within a matter of months, the new management had introduced much innovation. The Office was opened to the public again on January 1, 2012. Among other things, the human resource capacity of the ALS was improved. New professional staff comprising land economists, planners, geomatic engineers (land surveyors) and legal experts, were recruited. Although these professionals are to work as a team, each of them has specific area of specialization. These professionals are paid from internally generated funds (KALS1, pers. comm., 2012).

The new ALS has directed that no traditional leader should dispose of any lands until the planning authorities have approved the plans. A list of approved land professionals is available for traditional leaders who may need their services (KALS2, 2012). The new ALS has also taken over all other activities that were previously being carried out on behalf of the ALS by the Lands Commission.

Customer care is at the centre of the new administrations' strategy to change the negative image that the public had about ALS. In line with this, a webpage has been designed to provide ready information to clients. The webpage (www.otumfuolands.com) provides information about available services, requirements and pricing at the new ALS. Receipts are to be issued for all payments and customers have the option of making payments at a bank. Provisions have also been made for regular auditing of the Units' accounts.

The new administration has given a window of opportunity to all who have acquired land rights within the Kumasi Traditional Council to register their rights at reduced rates for six months starting from November 2012. The secretariat announced a project tagged “Otumfuo land lease documentation” (Asantehene Lands Secretariat KALS1, pers. comm., 2012). Under this project, a moratorium of six months is granted from November 2012. The project is to facilitate lease documentation of land allocated by the various caretaker chiefs from December 1, 2011 to as far back as possible. During the period, lease application from allottees is to enjoy reduced cost and special lease documentation at ALS. The project is in partnership with the public land administration systems to ensure smooth running of the project during the period. The implementation of this project will improve public records of Kumasi lands (KALS, pers. comm., 2012).

6.9.4 Assistance to traditional leaders

The new administration intends to strengthen the bond between the secretariat and care-taker chiefs who represent the allodial owners. Among other things, the secretariat wishes to open its doors to traditional leaders and provide timely and professional advice in all areas of customary land management.

Hitherto, every customary lessor had its own Allocation Note (AN). A new AN has been designed to be used by all traditional leaders within Kumasi Traditional Council (KALS1, pers. comm., 2012). The AN is in triplicate to be signed by the Asantehene, the care-taker chief and the allottee. It is envisaged that the use of the new AN will help reduce the incidence of multiple sales and reduce disputes. It will also ensure transparency and accountability over the issue of ‘drink money’.

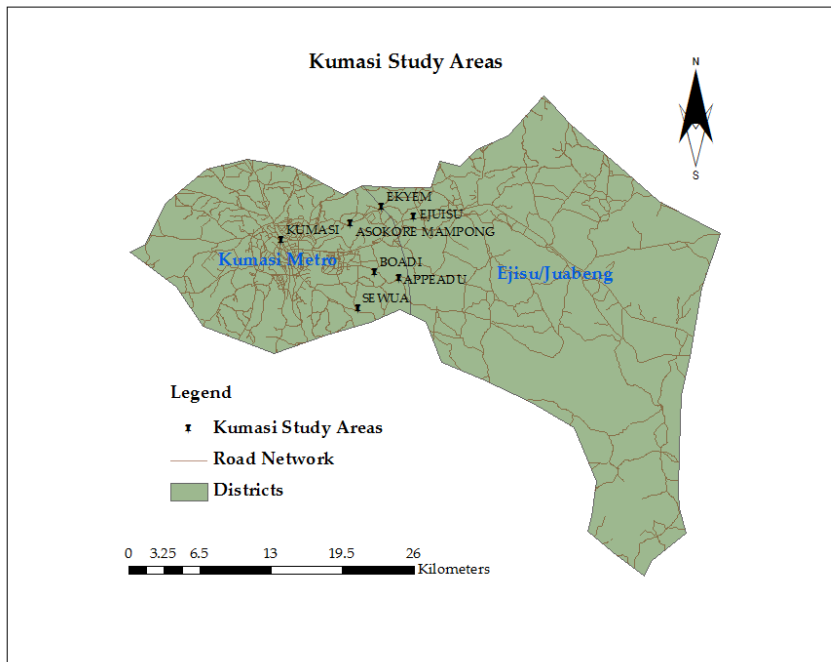


Figure 6-8: Kumasi case study areas

6.10 Asokore Mampong

Asokore Mampong (see Figure 6-8) came to their present settlement in the early parts of the 16th century. The 'Ekona' clan was the first to settle in the area making them the ruling clan. Later, fourteen (14) other clans joined them and a stool was developed for each of these clans as members of the Council of Elders. Thus, the family head of each of the clans became involved in the day-to-day running of the settlement. The chief and his elders meet every Sunday afternoon to discuss problems in the clans or town and to deliberate on the development of the town.

Community members are free to bring their problems to the chief and elders. There were long queues at the reception each time the researcher paid a visit. He was informed, not all the queries were land cases, but that, some of the cases had to do with various social issues.

Those who joined the Ekona were given portions of land where they settled in groups (KAM1, pers. comm., 2010). Initially, land was communal, and mainly used for hunting and collecting wild fruits. Timber was used for building houses. Later, land was distributed in small portions to meet subsistence family needs (KAM1, pers. comm., 2010).

6.10.1 Land acquisition

The location of the Kumasi Airport, KNUST and rapid urbanization led to expansion of Kumasi to Asokore Mampong. Strangers started moving into the area in the 1980s, acquiring land as individuals and the community became a mix of indigenes and strangers (KAM5, pers. comm., 2010). Since the strangers came as individuals, each of them was given separate land on which to build (KAM1, pers. comm., 2010). There is no distinction between males and females in the allocation process. What is of concern is the ability to develop the land (KAM1, pers. comm., 2010). There has been gradual integration of indigenes and strangers. “They are all working together for the development of the town” (KAM1, pers. comm., 2010).

Nana Boakye Ansah Debrah is the current chief of Asokore Mampong. He ascended the Stool in 1986. He is a professional architect and was resident in Canada when he was ‘enstooled’ chief of Asokore Mampong (Berry, 2001). He now resides in his community and commands a lot of respect from both the community and his elders. Nana Boakye Ansah Debrah asserts that, when he was made chief, he went to the relevant government departments and obtained all the information about the lands of Asokore Mampong. He purchased copies of all layouts, and went to the Lands Commission where he had searches conducted on all land rights holders in Asokore Mampong, because there was not much information at the local level. He then crosschecked the information obtained with the situation on the ground, with his elders, and by site inspection.

It was detected that there were many empty spaces on the plans, which were occupied on the ground. He then, wrote to each of the ‘unauthorised’ people to produce their Allocation Notes. Most of these people produced genuine Allocation Notes given to them by his late uncle. “I collected old Allocation Notes and gave them new ones and advised them to go and register their titles at ALS and Lands Commission. Most people did not know they were supposed to register their land rights” (Asokore Mamponghene, pers. comm., 2010). This procedure was continued until parcels and right holders in Asokore Mampong were captured in a computer database (Asokore Mamponghene, pers. comm., 2010). The database makes land

administration easier. Searches and information about particulars of right holders is readily available (Asokore Mamponghehene, pers. comm., 2010). The computer database is maintained and updated by the chief.

6.10.2 Disbursement of land proceeds in Asokore Mampong.

Disbursement of land proceeds is based on what has been stipulated by the Kumasi Traditional Council. The only deviation is the portion supposed to go to the usufruct, which goes to indigenous community for distribution. The chief explained that when he ascended the stool, his predecessors had sold a lot of land without adequate compensation to usufruct right holders. He and his elders decided the portion for the usufruct holders would be distributed evenly between all the indigenous communities. Indigenes, who need land to build, register their interest with the family heads and the chief. The family heads allocate available plots to indigenes using criteria agreed upon by the various families. The list of beneficiaries is sent to the chief for his records (KAM1; KAM2; KAM3, pers. comm., 2010). Indigenes who are aggrieved by the decisions of the family heads may appeal to the chief (KAM3, pers. comm., 2010).

6.10.3 Dispute resolution

In recent years, the Asokore Mampong stool has had relatively few disputes. Three disputes have been recorded since 2003. One dispute was settled at the Traditional Council and two at the High Court. In one case, a sub-chief took the Asokore Mamponghehene to court, trying to restrain him from interfering with the sub-chief's land transactions (KAM2, pers. comm., 2010). Asokore Mamponghehene won the case because the Asantehene was called as a witness and his representative told the court that apart from the chief of Asokore Mampong, there is no other caretaker chief. There has also been boundary disputes case with neighbours like Ayigya and Nsenie all of which were won by the Asokore Mampong stool because they were the first people to settle in the area and gave land to these neighbours (KAM2, pers. comm., 2010). Traditionally, settlers do not dictate boundaries to indigenes since they were given land by the indigenes.

Land disputes between individuals, both indigenes and settlers, are rare but when they occur, the elders (KAM2, pers. comm., 2010) settle them. There are no

strangers on the Council of Elders yet strangers send their land issues to the Council for settlement (KAM2; KAM5, pers. comm., 2010).

6.10.4 Use of land professionals

Asokore Mampong does not lease land unless the area in question has been planned and the design layout approved by the Kumasi Metropolitan Assembly (KMA). The chief and elders have a particular licensed land surveying firm and planner who work hand in hand in the area. This, they argue, ensures consistency and continuity (KAM2, pers. comm., 2010; KAMS, pers. comm., 2010). The surveyor keeps copies of all cadastral plans and a database of the allottees. His database serves as backup for the Asokore Mamponghe's database (KAMS, pers. comm., 2010). The surveyor narrated how, on one occasion, viruses attacked the Chief's database and the chief had to rely on the surveyor's database for recovering the land records (KAMS, pers. comm., 2010).

6.10.5 Community development

Every piece of land that is leased out in Asokore Mampong has a component for community development. This money is used to support development projects in the town. Projects such as public toilets, funeral grounds, community-parks and other developmental needs of the community are funded (KAM2, pers. comm., 2010). There is also a scholarship scheme for indigenous children who show promise but cannot pay for education. About 18 children are supported in the basic schools each year (KAM2; KAM4, pers. comm., 2010). An indigenous woman remarked that the selection process for the beneficiaries of the scholarships is not transparent (KAM4, pers. comm., 2010).

Apart from the general scholarship scheme, the royal family has special support for royals (sons and daughters of female members of the royal family) for university education. This is to ensure that there is a pool of educated royals adequately prepared to carry the mantle of leadership in the future (KAM1, pers. comm., 2010). Five royals have graduated from various university courses, while others are yet to complete their studies (KAM2, pers. comm., 2010).

6.10.6 Land bank

The current leadership is of the view that it is almost impossible to reserve land for future generations. The only viable manner to solve the residential backlog that is predicted is to resort to the building of high-rise structures. Other means of earning a living apart from subsistence farming is required (KAM1; KAM2, 2010) since vacant land will soon be exhausted (KAM1, pers. comm., 2010). The chief bemoans the 50 acres of prime land, which was given to the erstwhile President J.A Kuffour's administration for the construction of 800 flats for an Affordable Housing Project. The project has been abandoned (**Error! Reference source not found.**) for political reasons (change of government) and the place has been taken over by squatters and a hide-out for criminals has been created (KAM1, 2011). Situations like this, he said, put traditional leaders in a difficult situation when releasing customary land for government use. He also cited the compulsory acquisition of the Kumasi Airport, which has not been fully utilised. He bemoaned the fact that people keep encroaching on the acquired land, in an unplanned and uncontrolled manner (KAM1, pers. comm., 2011).



Figure 6-9: Abandoned Affordable Housing Project in Asokore Mampong

The traditional leadership in Asokore Mampong is implementing strategic investment in the name of the Stool, for its future upkeep. Advantageous land points have been kept for such development. Land transactions are a major component of revenue for the maintenance of the Stool now, but they assert their land reserve will soon be depleted (KAM1; KAM2, pers. comm., 2011).

6.11 Boadi

Boadi (see Figure 6-8) was founded during the reign of Osei Tutu I, the first king of the Asante confederation. Nana Osei Tutu requested for a piece of land from his brother, the Ahomaso chief, to settle the relatives of his beautiful wife, Nana Akyeamaa (KB1, pers. comm. 2010). Akyeamaa was from the Asona clan of Kyebi Ahweniase in the Akim Abuakwa State, and stayed at Asokore Mampong before she was married to Nana Osei Tutu I (KB1, pers. comm., 2010).

A hunter, Esen Boadi, who had been hunting around the present day Boadi, told Nana Osei Tutu I about the land in Boadi. Nana Osei Tutu then requested his brother, the chief of Ahomaso to give him the land for his new wife. Thus, the relatives of Akyeamaa were settled in Boadi while she was at Hea, a place for the wives of the Asantehene in the palace (KB1, pers. comm., 2010).

Nana Akyeamaa had two brothers, Nana Kusi and Twum and they became the first caretaker chiefs of Boadi (KB1, pers. comm., 2010). The responsibility of the relations of the King's wife, in those days, was to supply her daily household needs such as firewood, pepper and foodstuffs.

Nana Akyeamaa became the favourite of the Asantehene because of her beauty and so she was nicknamed 'Hoahi' meaning the 'envied one', hence the royal family in Boadi is called Hoahi Royal family. Her first son, Nana Awuah Nyimfo, became the first chief (Odekro) of Boadi (KB1, pers. comm., 2010).

Nana Akyeamaa liked porridge and, in those days, there was no sugar, and so it was sweetened with palm sent by her brothers to the palace. The Asantehene tasted the palm wine and liked it. Therefore, he sent people to help Twum produce more for Asantehene's palace. After some time, some palm wine tappers were sent to Goaso that is why the royal family in Boadi are also royals in Goaso (KB1, pers. comm., 2010). It also explains why the chief of Boadi is the Asantehene 'palm wine tapper'. He is also doubles as the 'son' and 'brother-in-law' of the Asantehene (KB1, pers. comm., 2010).

The above history, explains why the Queen mother of Boadi has power over land. The Asantehene took the land for his wife (symbolically the present Queen mother

of Boadi is Asantehene's wife), and the land was under the care of his son Awuah Nyimfo. Symbolically the present caretaker chief is the 'son' and chief of 'palm-wine tappers' for the Asantehene (KB1, pers. comm., 2010).

Nana Akyeamaa had four daughters with Nana Osei Tutu I, who constitute the four royal family houses in Boadi currently (KB1, pers. comm., 2010). All the houses belong to the Asona Clan. Traditional leaders of Boadi are selected from the royal houses alternately.

These historical facts underlie the contemporary problems of land administration in Boadi.

6.11.1 Land consolidation and planning

The rapid development of Boadi and the subsequent pressure on land can be attributed to three main factors: the location of Kwame Nkrumah University of Science of Technology, Boadi's proximity to the Kumasi–Accra Road, and the urban sprawl of Kumasi (KB1; KB2; KB5, pers. comm., 2010). Initially, strangers moved into Boadi in search of farmlands but later land sales for residential housing became more lucrative (KB1, pers. comm., 2010).

The need for orderly development necessitated the consolidation of the farmlands of all the four royal houses. A planner was employed to design a town layout. Each house was given six plots to sell and use the proceeds to maintain their dwellings. Indigenes who wanted to acquire extra plots only had to pay a fraction of the market price (KB1, pers. comm., 2010).

6.11.2 Land for strangers

Non-indigenes, such as the descendants of the palm wine tappers, have to pay for land in the new township layout even if their ancestors were farming the area. This is because "They do not own land in Boadi, their ancestors were only given land for subsistence, it was not sold to them and therefore anytime the land owning family want their land, they could take it back" (KB1, pers. comm., 2010).

Initially, transactions were verbal and most people did not take receipts. There were always witnesses when the drink money was paid and these served as living testimonies of the transaction. An Allocation Note was introduced later (KB1, pers. comm., 2010). Price for a plot was fixed, so men and women had to pay equal amounts for land. Preference was given to those who could pay promptly. Land in Boadi was cheaper than that of the surrounding areas (KB1, pers. comm., 2010). “All our land has been sold cheaply or given to the University, leaving us with nothing” (KB3, pers. comm., 2010), a young man complained angrily.

6.11.3 Rivalry in Boadi

There is a strong rivalry between the royal family members in Boadi between the Queen mother and her followers and others (KB1; KB2; KB5, pers. comm. 2010). The division has led to various negative consequences on the development of the town. Among other things, there are multiple sales of land by opposing groups. An area earmarked for a community centre and a library was leased to a private developer (KB1, KB6, KB5, pers. comm., 2010). Planning regulations and laws are ignored.

Figure 6-10 shows a wall built to block a road. The Metropolitan Assembly had to intervene to stop this development (“Stop Work” written with red paint not very clear in the picture). The researcher has used this road for many years. One of the factions decided to develop without any regard to the designed layout.



Figure 6-10: A wall built to block a road in Boadi.

6.11.4 Disbursement of land proceeds

Disbursement of land proceeds has been a major source of conflict among the royal family members (KB2, pers. comm., 2010). The formula for disbursement is as laid down by the Kumasi Traditional Council (see 6.8); however, the historical development of the royal family (see 6.10, 6.10.1 and 6.10.3) has been problematic.

If the person using the land before the layout design acquired the land legally, he/she is entitled to compensation but those who are farming ‘illegally’ are only entitled to be compensated for their crops (KB1, pers. comm., 2010). Those who were allowed to farm lots without rent have no right to claim compensation, if the land is required for other uses. It is up to the discretion of the Queen Mother (KB1, pers. comm., 2010). The rest of the plots are divided as follows: Asantehene (Golden stool), Queen mother and Caretaker chief (Chief), stool, Royal family (elders) and Town Development Committee (KB1, pers. comm., 2010). The disbursement here is similar to the one recommended to be used by the Kumasi Traditional Council apart from the fact that usufructs are left out, due to the fact that, their ancestors did not buy the land, “it was given to them for subsistence” (KB1, pers. comm., 2010). There is inequitable disbursement of land proceeds and it is the main cause of the conflict in the royal family (KB1; KB2, pers. comm., 2010).

Until Boadi became part of Kumasi, large areas were allotted for commercial agricultural purposes. Currently, planners have been consulted to convert these areas to urban use. The original tenants will be given portions of these lands for their use, since most of them have dwelling units on their farms (KB1, pers. comm., 2010).

6.11.5 Land professionals

Boadi does not have a specific surveyor working for the royal family (KB1, pers. comm., 2010). They try using professional surveyors but some surveyors do not come personally, they send their junior staff to conduct fieldwork and they sign and seek approval from the Survey Department. The surveyor and his team also design the planning and preparation of the township layout (KB1, pers. comm., 2010).

6.11.6 Land records

A resident (KB6 pers. comm., 2010) asserts that she bought her land in Boadi about 15 years ago and she was able to process all her documentation. She currently has a registered lease. However, the situation has changed because of the in fighting in the royal family. Individual leaders transact in land and do not want others to know what they are doing. Consequently, no land records are kept (KB1, pers. comm., 2010). There are no up-to-date records of allocations in Boadi (KB1, pers. comm., 2010). There is even confusion about who should sign the Allocation Note (KB1; KB2; pers. comm., 2010).

Everybody who leases land from Boadi is advised to go to the Lands Commission to register -“They have the master plan of the town” (KB1, pers. comm., 2010). Even though the normal process is to go to Asantehene’s Land Secretariat before the Land Commission: “it is advisable to lodge a copy of your Allocation Note at the Land Commission first, so that anybody who goes there later will be cautioned that the area is already occupied” (KB1, pers. comm., 2010).

6.11.7 Dispute resolution

Most disputes in Boadi end up with the police or the formal courts. Due to the rivalry within the royal family, they cannot work together. A stranger narrated (KB5, pers. comm., 2010) how he acquired land from one of the factions, but was not given Allocation Note until somebody encroached into his land. Apparently, the land was re-sold by the opposing party. He was quickly given an Allocation Note and advised to report the matter to the police (KB5, pers. comm., 2010). Thus, the parties seek avenues to discredit each other rather than to seek the general good and development of the town.

6.11.8 Strangers and indigenes

There is a cordial relationship between indigenes and strangers. The strangers are interested in development of the town (KB1, pers. comm., 2010). There is an active Landlords Association trying to solicit development projects for the town.

6.11.9 Compulsory acquisition of Boadi lands

Boadi was affected by the acquisition of land for the development of Kwame Nkrumah University of Science and Technology. A large portion of land belonging to the town was compulsorily acquired. The land is under-utilised (KB1, pers. comm., 2010). Proximity of the town to the University has both advantages and disadvantages (KB1, KB2, pers. comm., 2010). Among other things, the indigenes have realised the value of education and they are encouraging their children to study, land values have gone up considerably and there have been employment opportunities. On the other hand, there has been increase in population, congestion and pollution of natural water bodies. Farmers have lost their livelihoods and people of questionable character now live in the community (KB1; KB2; KB4, pers. comm., 2010).

6.11.10 Community development

Boadi lacks development. The Land Lords Association, which is mostly made up of strangers has been doing its best to improve the physical infrastructure but they do not get any support from the royal family (KB1; KB4; KB5, pers. comm., 2010). The funds from land sales that are supposed to help in community development are never made available (KB1, pers. comm., 2010). Water supply, sanitation and the road network are all poor compared to other towns in the vicinity (KB4, pers. comm., 2010).

6.12 Sewua

Sewua is an old village about 25 kilometres from Kumasi (see Figure 6-8). It is predominantly a farming village within the Bosomtwe District Assembly. It is the proposed site for the new Asante Regional Hospital. The recent hike in demand for site in Sewua is the result of the siting of the Asante Regional Hospital in the town. The current chief of Sewua, Nana Amankwah Sakordie II (pers. comm., 2010), asserts that the rush for land for urban development in the town will change the economic status of the town and result in improved standards of living and new economic development.

6.12.1 Boundaries

The boundaries of Sewua were established by a court declaration in 1952. This was after Sewua had won a case in the then West African Court of Appeal (KS1; KS2, pers. comm., 2010). After about 50 years, the new chief of the adjoining village (Awuom) took the case to the Traditional Council requesting that the boundary between Awuom and Sewua be set anew. The then, Sewuahene, refused to go to the Traditional Council and took the case to the Supreme Court. The case was pending when the current Asantehene, in 1999, appealed to traditional leaders to try to settle all disputes out of court. The case was therefore withdrawn and sent to the Traditional Council for settlement. Traditionally, the final decisions taken by the Asantehene binds both chiefs. The authority of the Asantehene over all chiefs in the Kumasi Traditional Council is a factor deterring intra-township boundary disputes, since any disregard for his ruling about land disputes can lead to destoolment of the chief concerned (KS1, pers. comm., 2010). The Asantehene has ordered that no development should go on in the area until the case is settled. However, some people are adamant and development continues even though the case is still pending (KS1, pers. comm., 2010).

Sewua has relatively large area of land. It shares boundaries with Awuom, Fayiase, Esaso, Aputuogya, Donyina, Prabon, Tetrefu and Atodiase (KS1; KS2, pers. comm., 2010).

6.12.2 Planning and surveying

There has not been any planning or township layout in Sewua until recently after the installation of the present chief (KS1, pers. comm., 2010). In accordance with the Asantehene's directive, that there should be no disposition of land without planning the area and seeking for planning approval from the District Assembly, the chief and elders of Sewua employed qualified land professionals to develop a township layout. "The only resource that we as a town have is our land, and we know it is vital to our development, if well marketed. The best way to package our land to attract investors is to invest in a good layout" (KS1, pers. comm., 2010).

The chief and elders of Sewua have made special arrangements with some land professionals to work for them (KS2, pers. comm., 2010). The head of the land

surveying team confirmed the arrangement. They agreed with the chief and elders on the areas to be planned, surveyed and set out, the cost implications, the mode of payment and the period for the desired output (KS1, pers. comm., 2010; KSS1, pers. comm., 2010). There are instances where the land professionals pre-finance the project and when the layout is approved, they are given specified number of plots in lieu of cash payment (KSS1, pers. comm., 2010). The Allocation Notes for those plots are signed by the chief and the relevant elders and given to the land professionals as payment (KS1, pers. comm., 2010; KSS1, pers. comm., 2010). Both the traditional leaders and the land professionals consider this a win-win situation. The area is opened-up for development and the professionals keep their plots for speculation.

6.12.3 Disbursement of land proceeds

Sewua abides by the formula for disbursement of land as agreed by the Kumasi Traditional Council (see Table 6-1). The Sewuahene was not happy with what was going on at ALS under the old administration, so he bypassed the Secretariat and found a way of making the Asantehene aware of the number of plots accruing to the Golden Stool in Sewua after the development of the first layout in the town.

The Gyaasehene, who is responsible for the welfare of the royal family and the Chief, manages the fraction that accrues to the Sewua Stool. The Chief is the principal signatory to that account. Funds from this account have gone into renovating the palace, buying drinks during festivals and general upkeep of the Stool (KS1; KS2, pers. comm., 2010).

The Assemblyman and the Unit Committee manage the portion for community development (2/15). The Unit Committee is the lowest tier of democratic government in Ghana. It is, chaired by the Assemblyman. Among other things, these funds in Sewua have been used for the construction of toilets, and plans are advanced for the provision of a police station. Signatories to this account are the Assemblyman, a unit committee member and the Chief who is the principal signatory to the account (KS3, pers. comm., 2010).

Members of the community that were farming on the land before the land was consolidated and layout scheme developed are also given their share (2/15) of their original holdings usually in plots, which most of them sell (KS1;KS4; KSS1, pers. comm., 2010).

6.12.4 Land acquisition in Sewua

Two plots of land have been earmarked for every indigenous household (KS1, pers. comm., 2010). These two plots are given to the families and it is expected that they will develop them for their own use and keep them for their posterity (KS1; KS4, pers. comm., 2010). Women are given preference: “the woman is more important than man, because if you have ten men in a house they will all marry and give birth to other people, but just one woman can give birth to about ten children who will continue to expand the family” (KS1, pers. comm., 2010). Men’s apparent control over land is to ensure its safekeeping for women, since women are the nucleus of the family in Asante (KS1, pers. comm., 2010).

Besides these grants, indigenes that desire extra plots and have the capacity to develop them, are given preferential treatment and pay a fraction of the selling price for strangers (KS2, pers. comm., 2010). Indigenous men can buy their own land and build for their children.

Strangers lease land after paying the necessary fees. There are relatively very few strangers in Sewua due to the bad roads and the fact that urban sprawl has just begun (KSS1, pers. comm., 2010).

6.12.5 Development in Sewua

Nana Amankwah Sarkodie II and his elders are development oriented. Nana Amankwah Sarkodie II armed himself with the designed layout of the town and sought investors. He narrated how he went to the office of the Regional Director of Health Services marketing Sewua land, which they declined. However, two years later, he received a delegation from the Ministry of Health seeking land for housing medical staff. Eventually, it was decided to relocate the Regional Hospital from Kumasi to Sewua due to the availability of land (KS1, pers. comm., 2010). The

Ghana Institution of Languages and a private university have also acquired land in Sewua for educational developments.

The Chief and elders have donated land for the building of a police station. The community is mobilised to assist in the construction. The current palace is being renovated and expanded. A plan to construct a rural bank is in the pipeline. The rural bank is to promote economic development in the town (Sewuahene, pers. comm., 2011)

The people of Sewua, like most Ghanaians, believe in being buried on one's ancestral land. Bodies of dead Sewua people are regularly brought from all parts of the world to be buried at home. Most of these people stay far away for many years, without improving their family houses. Some built good houses in Kumasi and elsewhere in Ghana so that when they die, they are laid in state in their remote houses where memorial services are held. Only thereafter are they brought to the Sewua cemetery for burial (KS1, KS2, pers. comm., 2010). The Chief and elders in Sewua ruled that no corpse should be buried in Sewua cemetery unless the corpse has been lying at the family house for at least an hour. Traditionally, this is to enable the aged in the town, who cannot make go to the cemeteries, to pay their last respects (KS1, pers. comm., 2010). The result of this simple rule has been enormous; "because of this, development is on the increase, the dilapidated family houses are being renovated, and businesses of the indigenes are booming. Farm produce has ready markets and the people are motivated. That is why I want to also get a police station and a bank" (KS1, pers. comm., 2010).

6.12.6 Land records

There are no up-to-date land records in Sewua. Nana Amankwah Sarkodie II (pers. comm., 2010) asserts that his predecessors neither prepared layouts nor kept a record of land transactions. When he was installed, he sought permission from the Asantehene and announced that all those who had previously been allotted land by his predecessors should submit a copy of their documentation to ALS and give him a copy. He intends to verify these documents by visiting all the sites and issuing them with new allocation notes. Those who do not have documentation but have credible witnesses will also be issued with new Allocation Notes. His surveyor is helping in

keeping records of new boundaries. He personally keeps a notebook of all land transactions.

6.12.7 Land dispute resolution

There is a traditional land court that meets every last Tuesday of the month to settle land disputes. The leadership settles most cases locally. The chief and elders have made it clear that they will not testify in court about any land case if the litigants do not first come before them, since Asantehene has ordered that, as much as possible, traditional authorities (KS1; KS2, pers. comm., 2010) should settle all land disputes.

Most of the land dispute cases are on encroachment. Some people acquire land but do not develop and others build on their plots. A typical scenario is narrated below:

A woman's mother bought a piece of land, but could not develop it before she died. One day the woman was searching through her late mother's belongings and realised her mother had bought land from the previous Chief. Further enquiries revealed someone was building on the land, so she sent the case to the land court.

The chief and elders ordered that none of them should work on the land until investigations were over. A sub-committee of elders was delegated to investigate the claims and report to the house. The investigations revealed that the claims of the woman were right, the land was issued to her late mother; however, another woman had built on it. The Chief and elders decided to replace the land for the woman whose mother first bought it. While the resolution was on going, the woman started building on the land besides the other woman's building.

When the news of her building got to the chief and elders, the woman was summoned and charged with disrespect for the 'stool' and elders. She pleaded for mercy, and was made to pacify the stool with a sheep. She was ordered to stop her construction from the site and move to a new place in the interest of community peace (KS2, pers. comm., 2010).

The land court works closely with the Assemblyman and the Unit Committee to safeguard the interest of strangers, who may entertain fears that because the court is composed of indigenes they will not have fair hearing (KS2, pers. comm., 2010).

6.12.8 Land bank

There is a lot of land in Sewua, mainly used for farming purposes. However, the rush for urban land by individuals and institutions is alarming (KS1, pers. comm., 2010). The chief and elders intend to preserve 4000 acres for the use future generations. About 40 acres has been earmarked for the construction of a new palace (KS1, pers. comm., 2010).

6.13 Appeadu

Appeadu is a farming village about 6 kilometres from the Kwame Nkrumah University of Science and Technology, Kumasi. The chief of Appeadu, Odeefuo Amoaye II is one of the longest serving traditional leaders in Asante having been a Chief for over 60 years. He is highly respected by the community and his palace is opened at all times to those who need his help (KA4, pers. comm., 2010). Nana Appeaduhene is the head of the Asakyiri royal family in Asante.

6.13.1 Boundaries

Appeadu's leaders know the boundaries of Appeadu. It shares boundaries with Kokoben, Ahomaso, Apemso, Emina, and Donyina. Currently there are no disputes between Appeadu and her neighbours (KA1, pers. comm., 2010).

6.13.2 Planning

The chief and elders of Appeadu have invested in planning of the area. Qualified land professionals were used to plan the area (KA1, pers. comm., 2010). Most of the land is planned and approved by the Kumasi Metropolitan Assembly. "Streets have been named after distinguished ancestors and living legends in our community" (KA2, 2010). An approved layout of Appeadu is showed in Figure 6-11.

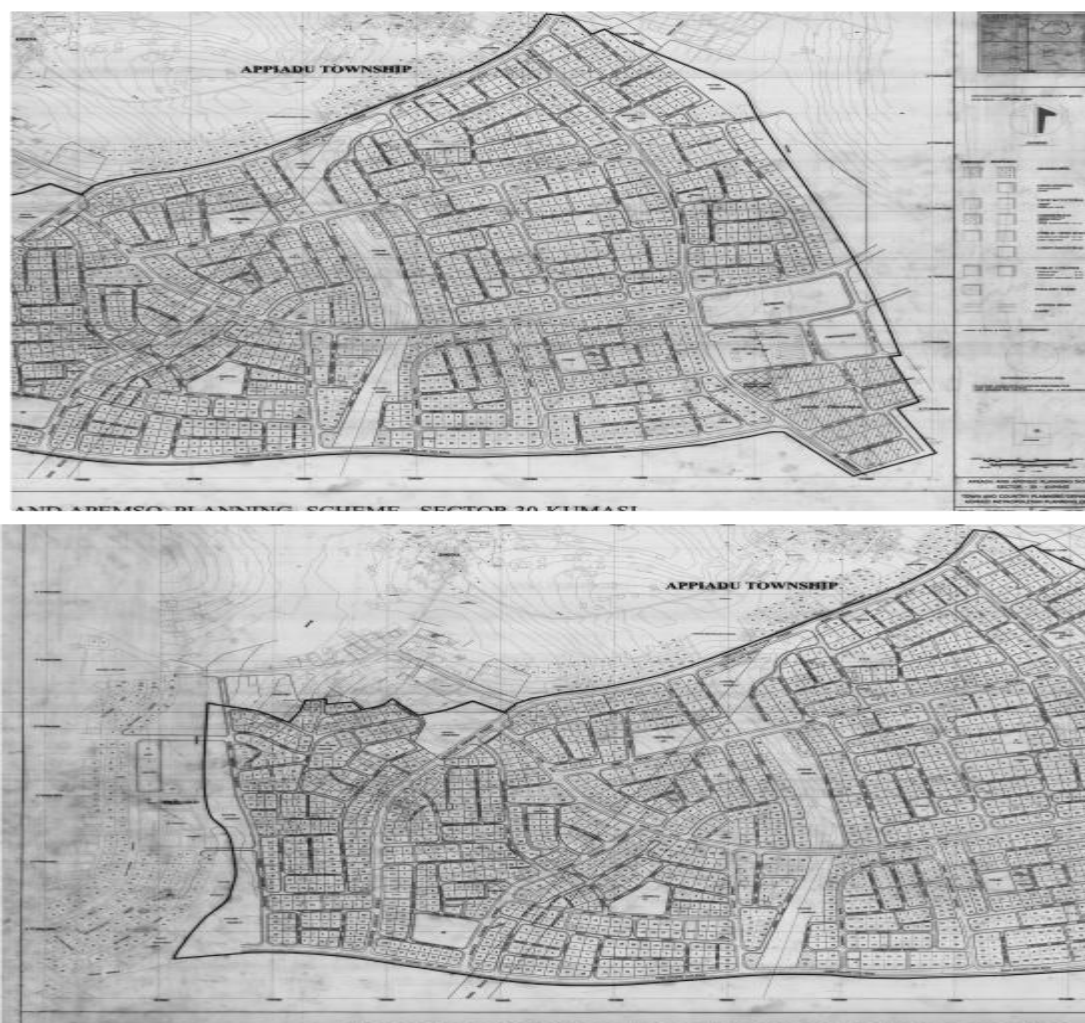


Figure 6-11: Appeadu planning scheme (source: Town and Country Planning, 2007)

A large portion of this area is bushy. The researcher was informed land in Appeadu is selling very quickly. Some areas have been leased for institutional use. Kwame Nkrumah University of Science and Technology, and World Vision have been given portions for their workers (KA1, pers. comm., 2010).

6.13.3 Disbursement

Appeadu was a farming village but because of the rapid development of the city of Kumasi and its proximity and connectivity in terms of roads networks to the Kwame Nkrumah University of Science and Technology, most of the land use has been changed to residential use (KA1, pers. comm., 2010).

“Everybody has been given his due, the Golden Stool, Appeadu Stool, chiefs, farmers and community” (KA1, pers. comm., 2010). Usufruct users were

compensated but were allowed to farm on the land, until development begins. An indigenous farmer affirmed: *“we have been cautioned against resisting the developers but we can reason with them. If you come and my cassava plantation is almost ready, it is only rational that you give me time to harvest them or if you are really in a hurry, to compensate me for my investment”* (KA3, pers. comm., 2010).

6.13.4 Land acquisition

Indigenes are given residential sites and are advised to develop and keep them for family use. However, if it becomes necessary that such plots should be sold to strangers, the elders should be informed for the necessary documentation (KA2, pers. comm., 2010). The family property is to remain in the lineage of the female members of the family (KA2, pers. comm., 2010). Indigenes who desire to acquire extra sites can do so by appealing to the chief and elders (KA3, pers. comm., 2010).

Strangers acquire land in Appeadu by applying directly to the chief and elders. The chief is approachable and friendly and said he would not be responsible for anyone who wants land in Appeadu and goes through middle men/women (KA5, pers. comm., 2010). Land in Appeadu is a lease of 99 years for Ghanaians and 50 years for non-Ghanaians.

6.13.5 Community development

Nana Odeefuo Owusu Amoaye II has been development-oriented right from the time he ascended the throne of Appeadu. He narrated how he organised the elders and people of Appeadu and collaborated with some government agencies to overcome guinea worm infection that was prevalent in the town. Appeadu today can boast of a mechanised borehole that supplies potable water to the town. Areas around the source of the water supply have been declared a sacred forest (nature reserve on the plan). No one is allowed to develop the area (KA1, pers. comm., 2010) and it is a taboo to visit the forest on Tuesdays. Although, sceptics may consider this a myth, it was the way water sources were preserved traditionally, and it still works (KA2, pers. comm., 2010). *“If anyone is found in the forest on a Tuesday he/she will be made to pacify the gods and our ancestors”* (KA2, pers. comm., 2010). The sacred forests are the only areas that are being preserved for the future generations.

Recognition is given to any person who distinguishes himself/herself in the service of the community. In 2004, a Catholic Priest, Rev. Father Boakye-Tawiah, Rector of Saint Paul's Catholic Church, was installed as Appeadu Nkosuohene (Chief for Development) with the stool name Nana Asante Yiadom II for his love and devotion for the development of the community (Ghana News Agency, 2004).

On the 8th of January, 2010, the Asantehene opened a Six hundred thousand Ghana Cedis (US\$420,000) multi-purpose community centre to commemorate the installation the Appeaduhene on the occasion of his 60 anniversary as chief of Appeadu (KA2, pers. comm., 2010). The centre was built by the Appeaduhene for the people of the area. He assured the community that proceeds derived from the centre will be ploughed back into community development of the area.

The chief and elders have constructed a durbar ground to serve as funeral grounds at a cost of Two hundred thousand Ghana Cedis (US\$130,000) (Freiku, 2011). They have also started a savings company, Appeaduman Financial Services, in the town to inculcate the habit of saving in the community. The nearest Banking facility is either in KNUST or Ejisu, both some distance away.

6.13.6 Land dispute resolution

Land disputes are settled by a Dispute Resolution Committee. The incidences of land disputes are rare. There are sporadic boundary disputes over the plan areas and these are normally resolved by professional land surveyors. The cost of the surveyor is borne by the litigants (KA1, pers. comm., 2010). Other cases such as land rights and inheritance issues are resolved by the Dispute Resolution Committee.

6.13.7 Land records

The chief and elders of Appeadu keep manual records of land transactions. The Land Allocation Committee keeps their separate records (KA3, pers. comm., 2010). From time to time, the committee meets the chief to reconcile their records. Clients are also advised to register their land rights at ALS and the Lands Commission (KA3, pers. comm., 2010).

6.14 Ekyem

Ekyem (see Figure 6-8) is a small farming village within the Kumasi Traditional Council. Administratively, it falls under the Ejisu-Juaben Municipal Assembly. It shares boundaries with Amoam Achiase (Achiase), Tikrom, Kyerekrom and Akokoamong. Land in Ekyem was predominantly for agriculture but because of the rapid expansion of Kumasi, there has been a rising demand for residential sites. The current chief of Ekyem is Nana Kusi Baabu II.

6.14.1 Boundaries

Ekyem has had boundary disputes with all her neighbours one time or another. Currently there is an on-going boundary dispute between Amoam Achiase and Ekyem (KEk1; KEk2, pers. comm., 2010). The case is pending at the Asantehene's palace.

6.14.2 Planning and surveys

Some areas in Ekyem have been planned, approved and demarcated. However, the use of inexperienced and unqualified land surveyors and the on-going disputes between the adjoining chiefs have distorted the design in some places. There are instances where access roads are encroached into or are completely blocked (KEk5; KEk6, pers. comm., 2010).

6.14.3 Disbursement of land

The disbursement of land in Ekyem is carried out according to the custom (KEk1, pers. comm., 2010). The land here falls under the Konadu Yiadom stool and so a share of the proceeds goes to that stool (KEk1, pers. comm., 2010).

There is a portion of land, on the border with Achiase that is, the centre of the dispute between the towns (KEk2 pers. comm., 2010). The allodial ownership is in dispute between the Ekyem and Achiase stools. The family, which owns the customary freehold tenure, is also divided with a faction supporting each of the chiefs. Land is sold by members of the family, and depending on the faction to whom they belong; an Allocation Note is given either from Ekyem or Achiase chief (KEk1, KEk2; KEk6 pers. comm., 2010). A narrative of a teacher who acquired land in the area elaborates the scenario:

I was one of the first people who leased land in the area. I was given an Allocation Note, which the Ekyem chief signed, and was later asked to pay for a new allocation, which I did not understand. It was during the argument that ensued that I was referred to an old man, Nana. Nana was very old. He told me, he was getting to 100 years old. His house was in Old Tafo, Kumasi. Nana narrated a long history explaining why I should have a new Allocation Note from the Chief of Achiase.

He said he was the last surviving nephew of the original occupier of the area. Nana claimed they belonged to the royal family of Achiase. There was misunderstanding between Nana's Uncle and a brother who was then the chief of Achiase. His uncle decided to move from Achiase and build his village on the boundary with Ekyem. When he died, he could not be buried in the Ekyem cemetery and had warned his relatives not to take his remains to Achiase, he did not want to have anything to do with the chief there, he was therefore buried on his land near his village. Nana's uncle never denied his roots were from Achiase, regularly he told his children, the young relatives growing up in Ekyem that their land belongs to the Achiase stool.

When the area was planned as a residential area, Nana was informed and he insisted the land was for Achiase and not Ekyem so they should inform the Achiase chief, as he was too weak to be travelling to the town. The relatives who have lived most of their lives in Ekyem did not straight away take the lands back to Achiase as they had been instructed. They first went to the chief of Ekyem and negotiated on the disbursement of the plots. The Kyemhene agreed with them on the terms and started signing their Allocation Notes. When Nana heard about this he insisted what they were doing was a taboo and that the right thing must be done. They approached the Achiase Chief and he told them he was aware of what was happening and he had decided to seek redress from the Asantehene. He was happy that they had come home. He would only collect a minimal amount for giving them Allocation Note. Some members of the family decided to change the Allocation Note from Ekyem to Achiase but others refused to change (KEk6, pers. comm., 2010).

Upon hearing the story as narrated by Nana, the respondent argued that the mistake was not from her, so the new Allocation Note should be prepared at their own expense. She was made to pay a minimal amount for the Achiasie Allocation Note. She now has two Allocation Notes for the same plot (KEk6, pers. comm., 2010).

One plot, different Allocation Notes from two stools (chiefs)

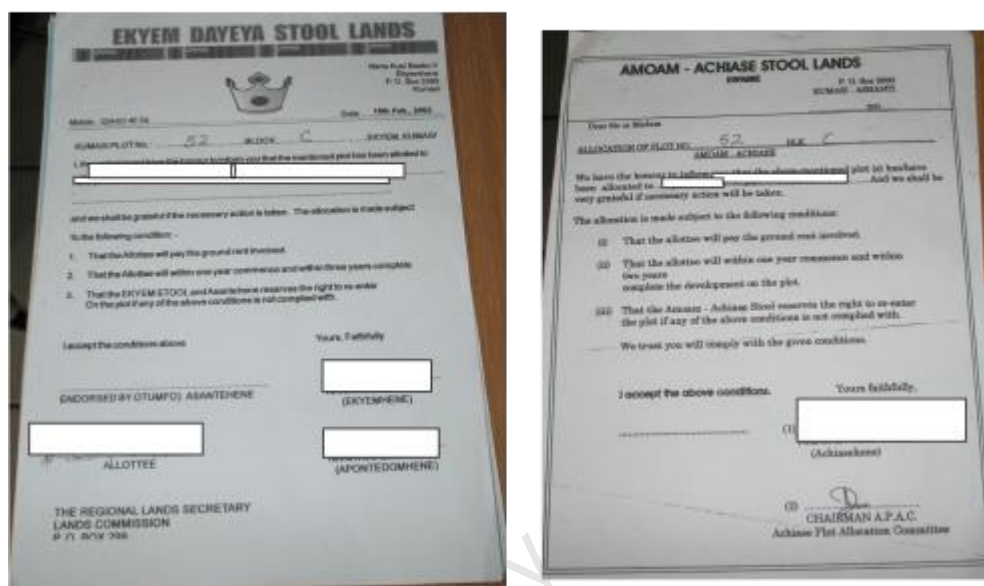


Figure 6-12: Land conflicts in Ekyem

The parcel has been registered by the Ejisu District Assembly under Ekyem in obtaining a building permit for development of the site. **Error! eference source not found.**, gives an indication of the complexities of, land allocation and record keeping in conflict areas. Under such conditions, documentation (Allocation Note) does not guarantee security of tenure. A stranger resident reckons it is prudent to obtain Allocation Notes from all factions, so that you are not affected by the outcome of the litigation, since after the litigation those who have wrong Allocation Notes will pay higher prices (KEk7, pers. comm., 2010).

6.14.4 Development

Apart from electricity, which is supplied from the national grid, Ekyem lacks most basics amenities like piped water, basic schools and clinic. There is a general feeling that the town is being neglected by the District Assembly and traditional leaders seem not to care (KEk3, pers. comm., 2010).

6.14.5 Land disputes

Land disputes are common occurrences in Ekyem. The family who were farming on the disputed land is divided (KEk1; KEk2; pers. comm., 2010). One faction was loyal to the chief of Ekyem and the other to the chief of Achiase. Each faction had the same layout design and are leasing out the plots to innocent leases. Almost every plot has been sold to two or more people. The resultant effect is chaotic: demolishing, counter demolishing and land-guards harassing innocent people. Consequently, most clients have abandoned the area and development has come to a standstill. The Asantehene has ordered that all new developments in the area should cease until the dispute is settled. Some people lost their money; in their efforts to reclaim, they have not been successful since their monies have been spent on litigation. Most disputes are taken to the police since the customary dispute resolution committee is ineffective (KEk1, pers. comm., 2010).

6.14.6 Land records

Land records are not properly kept in Ekyem. Time and again, the chief and elders would demand that all those who had bought land should produce their documents at the palace. “On one occasion I was told that I should pay some amount because the Allocation Notes were to be changed, it was absurd because I was given the same Allocation Note, signed by the same people. It is a way of extorting money from innocent land users to pay for their litigations, since there is no more land to sell” (KEk6, pers. comm., 2010). There is no unencumbered land in Ekyem. Most of the undeveloped lands are under litigation (KEk2, pers. comm., 2010).

6.15 Ejisu

Ejisu is about 20km from Kumasi on the Kumasi - Accra Road (see Figure 6-8). It is also the capital of the Ejisu-Juaben Municipal Assembly. It also serves as the

headquarters of the Ejisu Traditional Council. The Chief of Ejisu is the Paramount Chief of the Ejisu Traditional Council, made up of 33 towns. The Paramount Chief of Ejisu, Nana Oguakro Afrane Okese IV was installed in 2008. He succeeded his late uncle, the late Nana Aboagye Agyei II (KE2, pers. comm., 2010).

Nana Oguakro Afrane Okese IV, at his installation, ordered that all land cases in court within the paramount area be withdrawn from court to be settled by traditional leaders (KE1, pers. comm., 2010). The new leader was described as “autocratic and someone who wants endorsement for his views” (KE4, pers. comm., 2010). Such a leadership style may have its strengths and weaknesses.

6.15.1 Land Allocation

One-third (1/3) of the land, or proceeds from land sales goes to the Paramount Chief. The rest of the distribution is left to the discretion of the local chief and his elders. Males and females are entitled to land on equal basics; however, males cannot bequeath their land rights to their children because inheritance is matrilineal. Indigenes are of the view that strangers are taking over their land because they are richer and can acquire land from traditional leaders at whatever price is asked (KE5, pers. comm., 2010). Ubink (2008) observed similar trends and reports of indigenes trying to sell their land before traditional leaders seize them and give them minimal compensation.

Strangers acquire land through leasehold. Land acquisition by strangers is strictly based on one's ability to pay. Place of origin or gender does not significantly hinder acquisition. Strangers have to consult the traditional leader responsible for the area of interest (KE2; KE3; KE5, pers. comm., 2010). They pay drink money to access land and they are given an Allocation Note by the traditional leader in charge of the area where the land is situated (KE5, pers. comm., 2010). However, some strangers risk their money by acquiring land from indigenous people who dispose of their usufruct land rights when they feel threatened by rapid urbanization and the concomitant seizure of land by some traditional leaders. Such acquisitions most often end in dispute (KE2, pers. comm., 2010).

Some respondents complained of a threat of the demolishing of their developments (KE5, pers. comm., 2010). An official of the traditional council explained that, that particular location had been earmarked for the construction of a memorial for Yaa Asantewaa, the Queen mother of Ejisu, who lead the Asantes in battle against the British, in 1900 (KE2, pers. comm., 2010). The respondents claimed they had legally acquired their sites from the previous chief (KE5, pers. comm., 2010).

6.15.2 Survey and mapping

The Ejisu Traditional Council works closely with the Land Sector Agencies who are based in the District. A major challenge to customary leaders here is the preparation of layouts (KE2, pers. comm., 2010). “It is very costly and most chiefs cannot afford it. If government should assist by paying the planners and other professionals for the development, and monitoring and enforcement of township layouts, development will conform to design plans” (KE2, pers. comm., 2010). KE1 and KE2 (pers. comm., 2010) argued that if an area is well planned and developed, the government derives a lot of benefits. They complained about the high cost of planning and surveying which force some chiefs to use unqualified surveyors in order to cut costs. However, in the final analysis, the designs produced by the unqualified surveyors create more problems. The designs do not match the situation on the ground (KE1, KE2, pers. comm., 2010).

6.15.3 Government involvement in customary land management

Ejisu Customary Land Secretariat (CLS) has benefited greatly from the first phase of the Land Administration Project (LAP1). The District was chosen as one of the pilot programmes for demarcation and survey of customary areas. Consequently, all the land sector agencies were trained and equipped (KE1, pers. comm., 2010). The capacity building in the District should positively affect peri-urban land delivery and management if landowners and statutory land agencies cooperate with each other.

There has been a clash between the Ejisu-Juaben Municipal Assembly and the Omanhene of Ejisu (Oguakro Afrane Okese, IV) over land in which the Assembly petitioned the Asante Regional Minister to intervene for amicable settlement (Ghana News Agency, 2010). The Assembly accused the traditional leader of allocating a portion of its land for development without obtaining permission from the assembly

which, by law, is the statutory planning authority for the area. They also accused the traditional leader of demolishing some buildings without recourse to the Assembly (*ibid.*). The Ghana News Agency states that the Chief argued that, technically, the Assembly does not own any land in the area, all land belongs to the Traditional Council which is headed by the Chief (*ibid.*).

6.15.4 Allocation Note and records keeping

The Ejisu Traditional Council has agreed on a common procedure for land acquisition. Each Allocation Note has to be signed by the local chief and two elders. This is then counter signed by the Paramount Chief who also adds a seal (KE1, KE2, pers. comm., 2010). This is done to expose corrupt practices and illegal sales (KE2, pers. comm., 2010). The Customary Land Secretariat (CLS) coordinates the issuance of Allocation Notes between the Paramount Chief and the caretaker chiefs. The District Assembly has to scrutinise all Allocation Notes before issuing building permits.

The CLS also assists in the processing of leases. The preparation of the lease is carried out in consultation with relevant role players, such as the OASL for ground rent, land surveyors for verification of the site plans, and lawyers who need to sign leases and the Paramount Chief. The client then carries this document to a special desk at the Land Commission in Kumasi for the registration of the lease. This creates documentation at the CLS, the District Assembly and if leases are registered at the Land Commission in Kumasi and subsequently reduce land litigation to the barest minimum. This process has been in operation since the installation of the present Paramount Chief in 2008 (KE2, pers. comm., 2010).

6.15.5 Land dispute resolution

The traditional authorities where possible, settle Land disputes in Ejisu. All those who have grievances first have to appeal to their elders in the local communities to get the matter settled. When the case is not settled, it may go to the divisional chief within the paramount area, before final appeal is made to the Paramount Chief. Disputes are settled amicably, and most of the time it is a win-win situation with the sole aim of the adjudication committee to restore peace and harmony for the

community (KE2, pers. comm., 2010). All land dispute resolution is done publicly and procedures are video-recorded (KE2, pers. comm., 2010).

As part of the data collection exercise, the researcher had an opportunity to witness one dispute resolution case by the Ejisu Traditional Council. The case was between a woman, an indigene of Ejisu and the Paramount Chief. The woman had been accused of disgracing the Paramount Chief and casting a slur on his reputation.

Settings: - All the divisional chiefs were present with some of their elders. The Paramount Chief was not present because he had direct interest in the case. Before the case began, all those present were made to sign an attendance book. Members of the adjudication committee were all males. One of the divisional chiefs chaired the committee in the absence of the Paramount Chief.

The woman narrated how, one day, when she was going about her normal business of selling food, a bulldozer came and overturned all her wares, destroying everything that she had and her livelihood, since that was her only source of income and support for her family (KE4, pers. comm., 2010). In her desperation, she went to an FM radio station in Kumasi to report the act implicating the Paramount Chief who she accused to be the mastermind behind the action. The woman was accused of bringing the name of the Paramount Chief to disrepute. Representatives of the FM station and the District Assembly were there to testify.

The evidence showed that the Municipal Assembly for which she was paying rates granted the woman permission to use the site temporarily. The area was part of an access road to a public clinic, for which she was paying rates. At a stage, she was asked to vacate the area for the creation of the access road by the Paramount Chief. The Municipality, therefore, stopped taking rates from her. On the day in question, the woman was in the middle of getting ready for her customers when the bulldozer came and destroyed all her livelihood. The operators had been instructed not to entertain any excuses and so did not listen to any plea.

At one stage, the Divisional Chiefs were asked to give their judgment one after the other, and all of them declared that the woman had not done well and that she should

plead for mercy. The woman insisted she had not done anything wrong and therefore did not need to plead for mercy.

At one stage, the representatives of the FM radio station and the woman asked to be excused. The radio station was trying to persuade the woman to plead guilty and apologize but the woman still stood her ground. The case ended without a judgment because no consensus was reached. “This could not have happened in the olden days; a woman withstanding our chief” an elderly man from the crowd muttered. The entire process was video recorded.

6.15.6 Development

Ejisu enjoys the status of a Municipal Capital. The town has seen a lot of development both from the government and from the Traditional Council. A modern office and shopping complex is under construction. The Traditional Council (KE, pers. comm., 2010) funds it.

6.15.7 Chapter summary

This chapter has presented the various case study narratives highlighting issues relating to land acquisition and administration in customary areas. The analysis of the case studies is undertaken in Chapter 8.

7 FORMAL INSTITUTIONS THAT PARTNER WITH CUSTOMARY LAND ADMINISTRATION IN GHANA

7.1 Introduction

In Chapter 6 presented case narratives based on data from traditional authorities and other customary stakeholders. This Chapter discusses data collected from formal institutions that work closely with customary land administration systems in Ghana. Many official institutions interact with traditional authorities on a daily basis; the institutions discussed here have legal mandates for the administration of customary land. They are Office of the Administrator of Stool Lands (OASL), Land Registration, and Survey and Mapping Divisions of the Lands Commission. The latter is under the Ministry of Lands and Natural Resources and Town and Country Planning Department (TCPD) that is under the Ministry of Environment, Science and Technology at the national level, and Ministry of Local Government at the district level.

7.2 Office of the Administrator of stool lands (OASL)

A series of laws were passed to control the misuse of stool property by the colonial government. In 1927, a legislation making provisions for the establishment of stool treasuries was introduced (McMillian, 1940).

The Native Administration (Colony) Ordinance empowered paramount chiefs with the concurrence of their elders and councillors, to establish stool treasuries. They were to specify what stool revenues were to be paid into the stool treasury and to control and regulate the expenditure. This ordinance did not curtail the misuse of stool revenue (McMillian, 1940).

This was followed by the Native Administration (Treasuries) Ordinance, which established a Finance Board to manage the treasury. Again, this was ineffective because of lack of political will for enforcement (*ibid.*).

The Stool Protection Ordinance (1940) sought to exercise governmental control over stool land administration. It placed some limitation on the disposal of land by chiefs and their councillors in respect of stool lands in Asante. This ordinance made it

unlawful for traditional leaders or any other person, to alienate, pledge, or mortgages any stool property without the consent, in writing, of the Chief Commissioner for Native Authority. Any such transactions were unlawful and any such alienation, pledge or mortgage in contravention of this section were null and void (Meek, 1946).

The Kumasi Lands Ordinance, 1943 (Cap145) returned Kumasi Part 1 Lands to the Golden Stool, except those used for government purposes and tasked the traditional authority to collect all rents, maintain proper books of accounts and render accounts annually to government (Meek, 1946).

7.2.1 Customary land administration after independence

The Office of the Administrator of Stool Lands (OASL) was carved out of the Akim Abuakwa (Stool Revenue) Act, 1958 and the Ashanti Stool Lands Act, 1958. These operated to restrict Okyehene and the Asantehene respectively in the management of stool lands and revenues accruing from them. Management of stool land and the disbursement of its revenue had been the sole prerogative of the stools. The state intervention was to ensure an equitable distribution of the wealth generated from stool lands for the benefit of the whole community especially subjects of the stool owning community. Akim Abuakwa and Ashanti were used as pilots and the Administration of Lands Act 1962 (Act 123) extended it to the management of all stool lands in the country.

Provisions were made for the creation of the OASL in both the 1969 and 1979 Constitutions, but it was only established under the 1992 Constitution. Article 267 (2) of the 1992 Constitution made provision for the establishment of the OASL and the appointment of the Administrator of Stool Lands. This led to the enactment of the Office of the Administrator of Stool Lands Act, 1994, Act 481. In October 1996, the Government appointed Dr. (Mrs.) Matilda Esi Fiadzibey as an Administrator of Stool Lands to ensure effective mobilization and disbursement of revenue accruing from Stool Lands.

Article 267 (2) of the 1992 Constitution and Section 2 of Act 481 to perform the following responsibilities mandates the Office:

- the establishment of a stool land account for each stool and pay into this account all rents, dues, royalties, revenues or other payments whether income or capital from the stool's lands.
- the collection of all rents, dues, royalties, revenues or other payments whether income or capital
- the disbursement of such revenues

Article 267(7) mandates the OASL and the Regional Lands Commission to consult with stools and other traditional authorities in all matters relating to the development and administration of stool lands and make available to them all relevant information and data. They are also to co-ordinate with all relevant public agencies and traditional authorities to develop a policy framework for the “rational and productive management of stool lands” (Government of Ghana, 1992, Article 267[8]). OASL is under obligation, once in a year, to render accounts of income and expenditure to each stool (Government of Ghana, 2008, Act 759 [74]).

OASL also provides alternative dispute resolution services to stools and tenants and facilitates farm demarcation in farming areas. They assist in the establishment and management of customary land secretariats (CLS). They assist secretariats in training of staff, data collection and sensitisation programmes. They also carry out research and produce publications on key land issues within their mandate (OASL1, pers. comm., 2010).

7.2.2 Disbursement of stool lands revenue

Article 267 (6) of the 1992 Constitution prescribes how to apportion and disburse stool land revenue. Ten per cent of the revenue accruing from stool lands shall be paid to the OASL to cover administrative expenses. The remaining revenue is to be disbursed as follows:

- twenty-five per cent to the stool through the traditional authority for the maintenance of the stool in keeping with its status,
- twenty per cent to the traditional authority, and
- fifty-five per cent to the District/Municipal/Metropolitan Assembly, within which the stool lands are situated (see Fig. 6-15).

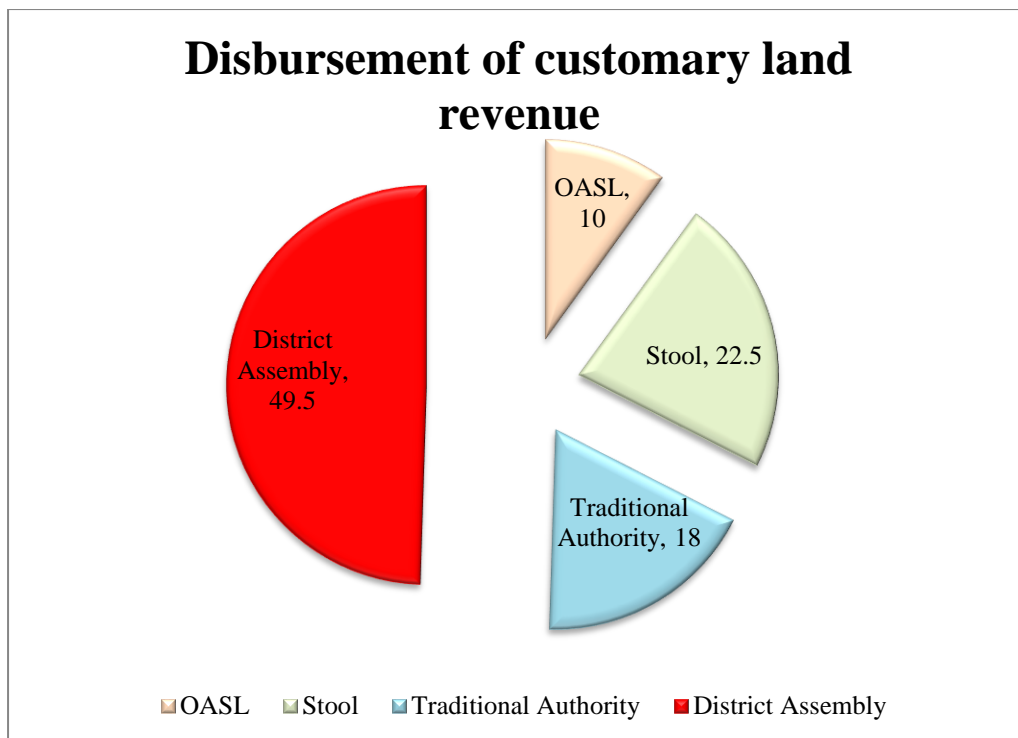


Figure 7-1: Disbursement of customary land revenue

7.3 Land Registration Division of the Lands Commission.

7.3.1 Land title and deeds registration

There are two types of registration systems in operation in Ghana, and Title Registration and Deeds Registration. Title registration, registers land as a unit of property and all references are made to the land whilst deeds registration, registers transactions on the land and not the land itself (KLTR1, pers. comm., 2010). The acts supporting these registrations are the Land Registry Act, Act 122 of 1962, and the Land Title Registration Act, 152 of 1986. The Land Title Registration Act was gradually to replace the system of deed registration in Ghana (KLTR1, pers. comm., 2010).

7.3.2 Systematic registration

Land title registration was supposed to be compulsory and systematic and eventually cover the entire country (Land Title Registration, 1986). However, systematic registration could not be implemented due to lack of data and administrative capacity. For example, about 70% of all properties in KMA have no documentation

(KLTR1, pers. comm., 2010). Systematic registration is impossible because, in the same area, some properties have documentation while others do not. It is therefore difficult to know what type of interest should be registered for a particular parcel (KLTR1, pers. comm., 2010). KLTR1 (pers. comm., 2010) argued that surveying may be carried out if government is ready to pre-finance systematic registration but, without documentation, systematic titling in customary areas such as Kumasi is impossible (KLTR1, pers. comm., 2010).

7.3.3 *Registration of customary freehold*

Customary tenure cannot be registered under the Land Registry Act of 1962. The Land Title Registration Law (PNDC Law 152) makes provision for registration of customary freehold, this provision has not been implemented (KLTR1, pers. comm. 2010). Customary freeholders who want their titles registered have no option but to register them as leases, depriving the owners and their descendants, perpetual customary rights. One possibility is to register customary freehold in the allodial title. Its administration may, however, be negotiated with customary freeholders and traditional leaders. A reasonable formula may be reached that will be acceptable to all parties.

The problem of converting leases to title deeds will be legally difficult to accomplish. The root of title of a lease should be at least thirty years before it can be converted to title (KLTR1, pers. comm., 2010).

7.3.4 *Allocation notes and registration*

Allocation Notes for areas that have not been approved cannot be registered (KLTR1, pers. comm., 2010). Thus, when the plan of the area is not approved, a buyer cannot register the land with the Allocation Note received from a chief. “Sometimes the courts declare someone as winner over a particular piece of land. However if there is no documentation to the land what right does the person get, leasehold or freehold? The person has to go back to the chief to negotiate the type of right” (KLTR1, pers. comm., 2010).

The chief may issue an Allocation Note, but there can be no registration if the planning authority has not approved the land use. The Customary Land Secretariats

(CLS), which LAP has introduced to assist customary leaders, will go a long way in solving these problems.

7.3.5 Progress of title registration in Kumasi

Progress of title registration has been generally very slow (KLTR2, pers. comm., 2010). Kumasi was declared a title registration area in 2000, but as at November 2010, only 1995 titles had been registered (KLTR2, pers. comm., 2010).

Table 7-1: Land title registration in 2004 -2010

Year	Male		Female	
	Incomplete	Completed	Incomplete	Completed
2004	70	102	19	51
2005	44	148	11	37
2006	52	160	9	39
2007	106	80	30	24
2008	162	103	36	21
2009	113	64	35	17
2010 (NOV)	79	18	36	8
Total	626	675	176	197

Most of the people applying for title registration are those engaged, or trying to engage in commercial activity, which demands that they get titles to their land. Table 7-1 shows the progress of title registration in KMA between 2004 and November 2010. The low rate of title registration is attributed to difficulty of getting leases, lack of education on benefits of title registration and confidence in the Allocation Note from chiefs (KLTR2, pers. comm., 2010).

With such slow pace of registration, it may take a while for customary tenure to be fully incorporated into title registration. It is essential, therefore, that traditional

leaders take steps to keep accurate records of their land transactions. CLS have been doing well in this regard as evidenced in the Ejisu case study (see 6.15.4.).

7.4 Surveying and Mapping Division (SMD) of Lands Commission, Kumasi.

The Surveying and Mapping Division (SMD) of the Lands Commission, formerly known as the Survey Department is mandated to undertake, among other things, national land surveys and mapping, licensing of land surveyors and verification of survey plans. It is also responsible for maintenance of up-to-date scientific geo-data, maps, plans, geographic databases and geo-information systems in the country. Its Head Office is in Accra but there are also regional offices. SMD has not been decentralised to the district level as at January 2012. The major statutory provisions are the Survey Act, 1962 (Act 127) and the Survey (Supervision and Approval of Plans) Regulations, 1989, (LI 1444). SMD is crippled in carrying out its core mandate due to lack of logistical support by central government (SMD1; SMD2, pers. comm. 2010).

Besides its main mandate, the SMD is engaged in mediation of land disputes (SMD1; SMD2, pers. comm., 2010). Some cases are referred to SMD by the formal courts, while individuals may solicit the help of the Division for their boundary dispute resolution without going to court (SMD2, pers. comm., 2010).

There are widespread land litigations within KMA (SMD2, pers. comm., 2010). The major causes of disputes handled by the SMD include:

- Multiple sales
- Fraudulent transactions by unauthorized members of land owning groups
- Conflicting claims over physical boundaries
- Disputes between adjoining customary land owning groups or traditional leaders
- Unethical behaviour of land professionals
- Inheritance/ family/ joint ownership complexities

Most of these cases are outside the mandate of the staff of SMD and therefore the litigants are referred to the traditional councils or the formal courts. “Most of the

litigants cannot understand when they are told that our speciality is fixing boundaries that have been surveyed and we have the original survey records. They think a surveyor should be able to mediate all land disputes” (SMD2, pers. comm., 2010). Table 7-2, Table 7-3, and Table 7-4 show the number of land boundary cases that came to SMD for mediation as against those referred by the formal courts. Table 7-2 indicates a backlog of pending boundary cases referred to SMD by the courts. It is evident that SMD is doing better comparatively, with mediation cases where disputants approach SMD directly.

Table 7-2: Boundary disputes referred to Survey and Mapping Division from courts

Judicial Year	New Cases	Completed Cases	Outstanding cases	% completed
2004	163	31	132	19
2005	89	40	49	45
2006	157	42	115	27
2007	174	38	136	22
2008	102	51	51	50
2009	94	23	71	24
Jun 2010	82	58	24	71
Total	861	283	578	33

Table 7-3: Disputes directly reported to SMD for mediation

Year	New Cases	Completed cases	Outstanding cases	% Completed
2004	32	13	19	41
2005	29	17	12	59
2006	41	14	27	34
2007	26	13	13	50
2008	23	9	14	39
2009	12	3	9	25
Jun 2010	20	8	12	40
Total	183	77	106	42

Table 7-4: Cases referred to SMD from case study areas

YEAR\Area	Asokore Mampong	Appeadu	Sewua	Boadi	Ekyem	Ejisu
2004		2	2	1		3
2005			1			1
2006			3			
2007		1	1			
2008	1	3	1			1
2009				1		3
2010	2	1				4
Totals	3	7	8	2	0	12

7.4.1 Delays in mediating cases by SMD

A number of reasons were given for the delays or inability to resolve or mediate in disputes effectively (KSMD2, 2010). Among these were:

- Inadequate staff for SMD

- Lack of modern survey equipment
- Lack of cooperation from disputants and interested parties
- Lack of proper documents and material evidence as proof of ownership
- Lack of cooperation among different government agencies, dealing with land.
(Some require payment for services e.g. searches, approved plans before rendering services.)

The possible improvements suggested were:

- accurate survey and beaconing/monumentation of customarily boundaries
- improvements of the professional staff recruits and equipment and logistics of land agencies
- education of the public on proper procedures for acquiring customary land
- government institutions should be networked to enhance data accessibility.
(SMD1, SMD2, pers. comm., 2010).

7.5 Town and Country Planning Department

Town and Country Planning Department (TCPD) is mandated to ensure orderly and progressive development of land, towns and other areas. The TCPD is to conserve and develop resources and to secure proper sanitary conditions (TCPD, 1945). The mandate of the TCPD is derived from the Town and Country Planning Ordinance 84 of 1945 and the Local Government Act, No. 462 of 1993. Among other things, TCPD engages in:

- formulation of long-term comprehensive strategic plans
- preparation of land use plans to guide development
- managing development to ensure compliance with approved planning schemes
- educating the public on development
- engage in research on development

It is not difficult to assess the performance of TCPD over the years. Travelling through the cities and towns in Ghana gives an indication of their performance. The poor performance is an indication of the limitations that TCPD has been through over the years (KTCPD1, pers. comm., 2010). They have been transferred from one ministry to another (KTCPD1, pers. comm., 2010), making them unstable. Another

major challenge is planning land belonging to traditional authorities for sustainable settlements and conservation without any control. Again, like most public institutions in the country, TCPD faces serious human resources and other logistical constraints (KTCPD1, pers. comm., 2010; KETCPD1, 2010). The TCPD at the local level is a member of the planning team for the Metropolitan/Municipal/District Assembly (MMDA) and therefore should not be solely blamed for the failure of settlement planning (KTCPD1, pers. comm., 2010; KETCPD1, pers. comm., 2010). They have no absolute control over planning in the country.

TCPD is mainly concerned with the preparation of planning schemes (layouts) for public and stool lands and the formulation of policies to direct and guide the spatial growth and physical development of settlements. Policing the designed layouts should be a corporate responsibility of all stakeholders (KTCPD1, pers. comm., 2010; KETCPD1, pers. comm., 2010).

7.5.1 *Three tier planning system*

The Land Use Planning Management Project (LUPMP), a subcomponent of the Ghana Land Administration Project (LAP), has proposed a three tier planning system for the country (LUPMP, 2010). It seeks to develop and strengthen the framework for spatial planning at the national, regional and local levels. The framework includes the formulation of a new national planning legislation and regulations in support of decentralisation policies. The new legislation proposes to declare the whole of the country a planning area (LUPMP, 2010). Implying no development can legally take place in Ghana, without a planning approval, when the legislation is passed. It is envisaged that the project will see fruition under LAP 2 (Second phase of LAP). The three tier planning system comprises spatial development frameworks, structure plans and local plans (LUPMP, 2010).

Spatial development framework will plan at the national and regional levels. Planning at this level will identify key strategic issues relating to national development plan. At the District level, it will link national and regional requirements to aspect of the MMDAs' medium term development plans. It is anticipated, that ultimately, the District level SDFs and the MTDPs will be merged.

SDF will indicate where structure plans, which cover the major areas of growth, should be undertaken.

Preparation of spatial development framework will be an opportunity to revisit, interact and build on visions at the national and regional levels for district development. Spatial development framework will be developed based on core objectives from which planning and resourcing of investment on economic development, land, settlement, infrastructure, culture and environment will follow.

Structure Plans will indicate land use for specific areas. This will include infrastructure proposals for communities undergoing substantial development (LUPMP, 2010), based on the spatial development frameworks. Land use zones on these plans would be accurate within five metres more or less (+/- 5m), and be legally enforceable.

Local plans will be prepared for parts of the structure plan area. It will show details of individual plot development in conformity with structure plan guidelines. Local plans will be the basis for decisions about development permit applications. In addition, unique parcel numbers will be reflected on the local plans and these will be used to register titles for land at the Lands Registry (LUPMP, 2010).

7.6 Chapter summary

Effective collaboration between traditional institutions and formal ones has the potential to enhance customary land administration. However, the benefits of this partnership can only be realised if both parties cooperate in an open and transparent manner. Capacity building and education, for all stakeholders is essential to the success of the collaboration.

8 ANALYSIS OF CUSTOMARY PERI-URBAN LAND ADMINISTRATION

8.1 Introduction

Analysis of the case studies, as narrated in Chapter 6, is undertaken in this chapter. To begin with, the good governance in land administration framework (FAO, 2009; Akrofi and Whittal, 2011) is used to classify the case study areas into functional and dysfunctional systems in both patrilineal and matrilineal case study areas. Evidence from each of the categories is triangulated to derive general characteristics of functional and dysfunctional systems in each of the categories. The resultant functional and dysfunctional systems are further analysed using the two streams model of SSM.

8.2 Functional and dysfunctional customary peri-urban land delivery systems

In assessing functional and dysfunctional systems of customary urban land delivery, use was made of good governance in land administration criteria as discussed in Akrofi and Whittal, (2011). Indices used in the analysis were efficiency and effectiveness, accountability, equity and fairness, participation, stable administration, price and prevalence of land disputes. Based on the data collected and presented in Chapter 6, each case was analysed using Likert scales (see 5.2.8). Detailed scoring of each of the criteria is given in Appendix 2 and 3. An example of the scoring for “efficiency and effectiveness” is given in section 8.2.1. Summary results on these analyses are presented in **Error! Reference source not found.** and **Error! Reference source not found.** respectively for Accra and Kumasi case study areas.

8.2.1 Efficiency and effectiveness:

Based on the case study narrative, each case is assessed on indicators such as, whether or not procedures for land allocation are clear and are applied. Aspects such as whether competent people are used in the allocation process, whether customary rules are applied, and whether proper records are kept, are assessed. Also scored are the involvement of statutory institutions, conflicting resolution and appeal systems and the protection of land rights of indigenes in the case study areas. Responses from the fieldwork are graded on a Likert scale as shown in Table 8.1.

Table 8-1: Assessing efficiency and effectiveness in land delivery: an example of Accra case studies.

Efficiency and Effectiveness	ACCRA (Patrilineal) Cases					
Questions \ Case study area	Maledjor	Teiman	Ogbojo	New Ningo	Afienya	Amrahia
Are procedures for land allocation clear, simple and working?	3	4	4	3	5	4
Are competent people used in the land delivery process?	3	3	5	4	5	3
Are customary laws applied in the land delivery process?	2	3	4	3	5	3
Are proper records kept on all land transactions?	1	2	2	2	3	4
Are statutory institutions and other professionals involved in the land delivery process?	3	3	4	4	5	3
Are the land rights of the poor and marginal groups (women, youth and peasant farmers) protected?	3	3	4	3	5	3
Are there mechanisms of protecting the rights of land developers?	1	3	4	3	5	1
Are land conflicts resolved timely, fairly and at reasonable cost?	1	4	4	4	5	1
Are there appeal mechanisms for conflict resolution?	1	4	4	4	5	1
Total (45)	18	29	35	30	43	23

Scale 1-poor, 2-fair, 3- average, 4- good, 5-very good

The potential total score for assessing efficiency and effectiveness in customary land delivery is 45. Ablekuma Afienya scored the highest with a score of 43 and Maledjor had the least score of 18. It is evident that generally land records are poorly kept in

the case study areas. Adoption of low cost approach to data recording, such as, that of the landhold title in Namibia (see 3.4.5.2) may improve the situation.

Similar analyses were carried out for the other criteria and in the matrilineal case study areas occurring in the Kumasi. The results are respectively shown in Table 8.2 and Table 8.3.

8.2.2 *Classification of functional and dysfunctional cases*

The factors that influence whether a case study area is functional or dysfunctional are not cast in stone; they are dynamic and vary over time depending on local conditions. There is complex dynamic movement between functionality and dysfunctionality in customary areas. Change of leadership (see 6.8.2 and 6.8.3) or use of land professionals can have great effect on functionality. For the purposes of this analysis, the top three scores of the study areas in either Accra or Kumasi cases were considered functional provided they obtained above 60% of the total score. The others were considered dysfunctional.

8.2.3 *Patrilineal (Accra) Cases*

From Table 8-2, Ablekuma-Afienya, Ogbojo and Teiman are categorised functional systems while Maledjor, Amrahia, New Ningo are classified dysfunctional. These are compared with the functional and dysfunctional systems respectively in Kumasi. The patrilineal case study areas indicate low scores for accountability and participation, in general. This may imply authorities are putting their self-interest above that of the community, which is contrary to the tenet of the African worldview.

Table 8-2: Analysing functionality in patrilineal Accra

Accra (patrilineal) case studies						
Good Governance Indicator/Areas	Maledjor	Teiman	Ogbojo	New Ningo	Alekuma-Afienya	Amrahia
Efficiency and Effectiveness (45)	18	29	35	30	43	23
Accountability (20)	6	10	11	9	10	10
Equity and fairness (30)	16	22	24	20	24	14
Participation (20)	8	14	14	11	14	9
stable Administration (25)	13	22	23	20	25	13
Price [Cost] (25)	14	18	19	15	19	20
Land disputes (25)	9	17	20	17	22	15
Total (190)	84	132	146	122	157	104

8.2.4 Matrilineal (Kumasi) Cases

Table 8-3: Analysing functionality in Kumasi (matrilineal) case studies.

Kumasi (matrilineal) case studies						
Good Governance Indicator/Areas	Mampong	Boadi	Sewua	Appeadu	Ekyem	Ejisu
Efficiency and Effectiveness (45)	42	13	35	41	12	30
Accountability (20)	16	6	16	16	7	14
Equity and fairness (30)	24	7	23	24	7	18
Participation (20)	15	5	13	16	5	11
Stable Administration (25)	20	8	20	20	12	19
Price [Cost] (25)	20	15	20	21	13	16
Land disputes (25)	21	18	18	22	11	15
Total (190)	158	72	145	160	67	123

Based on the same criteria (see Table 8-3) the functional areas in Kumasi are identified as Appeadu, Asokore Mampong, and Sewua while Ejisu, Boadi and Ekyem are dysfunctional. Just as in the matrilineal areas, accountability and participation scored low. The scores in the Kumasi case study areas are slightly higher than Accra's. This may be explained by the hierarchy of authority within the Kumasi case study areas where subordinate chiefs are answerable to higher authorities for their stewardship (see 6.9). Table 8-4 shows the functional and dysfunctional cases in each of the case study areas. The table indicates that functionality or dysfunctionality is not limited to either patrilineal or matrilineal peri-urban areas.

Table 8-4: Functional and dysfunctional case study areas

CASE STUDY AREA	FUNCTIONAL	DYSFUNCTIONAL
Kumasi (matrilineal)	Appeadu	Ekyem
	Asokore-Mampong	Boadi
	Sewua	Ejisu
Patrilineal (Accra)	Ablekuma -Afienya	Maledjor
	Ogbojo	New Ningo
	Teiman	Amrahia

8.3 Dysfunctionality in patrilineal case study areas (Accra)

In section 3.2.3, it was observed that customary tenure is flexible and can adapt to changing technological, economic and environmental situations. It was also observed that alienation of land might be detrimental to the distributive and cohesive identity of customary tenure. It has negative effects on cultural integrity and indigenous

communities (see 3.1.1). Section 3.2.2.1 argues that there is the need for community consultation and consensus before alienation may be carried out.

It was asserted in section 3.2.3 that customary tenure suffers in the face of rapid urbanisation if there are no land records and boundaries are unclear, and where traditional leadership lacks management capacity.

Ontologically, alienation is injurious to the African worldview (see 4.3.3). Freehold tenure, especially, breaks the cyclic ownership of land between ancestors, present and future generations co-existing on the land for their mutual benefit based on lineage and customary social relationships.

In section 8.2.3, Maledjor (see 6.2.4), New Ningo (see 6.5) and Amrahia case study areas had the lowest score when evaluated using the principles of good governance in land administration. This section identifies some of the issues related to their poor performance.

All the case study areas are undergoing rapid urbanisation (see 6.2.4; 6.5 and 6.7). Consequently, there are on-going land use changes. The study areas are connected with good roads to Accra and urban migrants are streaming into the area in search of affordable land for residential purposes (see 6.2.4; 6.5 and 6.7). Some allodial owners and land rights holders are trying to maximise profit by taking advantage of the high demand for land (see 6.2.5). New Ningo has an additional attraction apart from the good roads to Accra and Tema. The serene beach is unexploited (see 6.5.2). This adds to the pressure on customary land in New Ningo.

These pressures alone do not justify the poor performance of customary tenure and land administration since it has been shown to be flexible and adaptable to changes (see 3.2). Lack of land records, fuzzy boundaries, land litigation, ineffective management practices and lack of partnerships with private and governmental organisations in the area of land delivery, are sources of dysfunctionality in these peri-urban customary areas.

8.3.1 Land records

Dysfunctional patrilineal customary case studies do not keep proper records (see 6.2.8 and 6.5.5). Maledjor has no land records kept by the chief because he spends most of his time in litigation (see 6.2.8). Besides the chief, other land owning family members are selling illegally and consequently, no records are kept of such illegal sales (see 6.2.5). At New Ningo, the traditional leader does not believe in computerized record keeping since the records may be hacked into or corrupted by viruses. Original records are kept in a safe with the assistance of the chief's wife, and no copies are made (see 6.5.5). The immediate past chief did not leave any record about lands that were alienated (see 6.5.3). Apart from the chief, others are selling without any records (see 6.5.3). Amrahia keeps digital land records (see 6.7.6) and site plans are cadastral plans. Their accuracy is checked and authorised by the Regional Land Surveyor (*ibid.*) and copies of the plans are kept by the SMD of the Lands Commission. Thus, the keeping of land records in Amrahia is better than Teiman, which has been classified as a functional area. This indicates that good record keeping is not a sufficient indicator of a functional customary system.

Recognition of a person's land rights in customary areas by traditional leaders and the community is crucial for functional systems. This corroborates the findings of Nkambwe (2001) that land records are generally non-existent in customary areas, and that most customary land administrators depend on their memory. New Ningo (see 6.5.3) and Maledjor (see 6.2.8) sometimes rely on memory and this may explain why land conflicts abound in these peri-urban environments.

8.3.2 Indeterminate boundaries

Section 2.2.10.1 underscores the importance of boundary definition and marking in customary areas even though most customary areas still depend on natural boundaries such as rivers, mountains and trees. Customary boundaries are normally recorded in the memory of those who witness the transfers. However, the current complexity of peri-urban customary areas – in terms of heterogeneous population and overlapping land rights, makes this form of recording unsuitable. The case study data indicates that there are still indeterminate boundaries in some peri-urban areas. Maledjor has boundary disputes with her neighbours (see 6.2.3). The High Court has ruled in her favour and so Maledjor claims that their boundary is settled; however, a

higher court can overturn that judgement if new evidence emerges (Ogbojo - see 6.4). Amrahia has a boundary dispute with one of her neighbours (see 6.7.4). New Ningo has no boundary disputes with her neighbours but all of the dysfunctional cases are plagued with internal boundary disputes because of unauthorised sales (see 6.2.3; 6.5.3 and 6.7.4). The presence of illegal or unauthorised sales, leads to numerous internal boundary litigations.

Both internal and external boundary disputes can be adjudicated using customary land dispute resolution mechanisms. These aim at consensus and ensuring the peace of the community rather than the winners or losers scenario, which is the route of litigation in the formal courts and is contrary to the African worldview of communitarianism (section 4.3.2).

8.3.3 *Traditional land management*

Chieftaincy has been involved in local management of people and natural resources in some sub-Saharan Africa countries for many years. It can ensure orderliness in society (See 2.2.8 and 3.2.2). Traditional leaders have a dual responsibility of managing local affairs and executing government policies. In doing this, efficient traditional management is indispensable. In peri-urban customary areas, if leaders lack initiative, development may be retarded (see 3.2.2). Areas characterised by rivalry and competition for authority (See 6.2.5, 6.10.3 and 6.13.3) or unfair distribution of land and its resources by leaders spark litigation (see 6.2.5) and adversely affect socio-economic development in such communities (see 6.7.4 and 6.13.4).

The organisation of centralised traditional land management is relatively new in Maledjor and other La stool lands (see 6.2). The pooling of all land transactions from different families through one central leader (chief) is relatively new in the Accra area, and it is being resisted in almost all the La Stool land areas (see 6.2; 6.3; 6.4 and 6.7). For many years, the practice has been that each family head manages the family's land, usually in consultation with family elders (see 6.4.1; 6.6.1, and 6.7.2). However, the effect of rapid urban growth, commercialisation of land and high pressures on urban land has resulted in some chiefs and other traditional leaders who hold allodial title, selling the land for private gain without considering the effect of

such sales on their subjects (see 6.2.5 and 6.7.4). This has resulted in conflicts between traditional leaders and indigenes (see 6.2.6) or strangers (see 6.7.4) as evident in Maledjor and Amrahia respectively. Individual greed, rather than the interest of the community, is weakening customary land administration.

8.3.4 *Land litigations*

Land disputes are rampant in dysfunctional customary areas especially in peri-urban areas where there is pressure on land because of high demand for urban land use. This is usually the case where traditional leaders neglect traditional rules and try to amass wealth for themselves at the expense of their communities (see 6.3.7; 6.4.7, 6.5.6; and 6.6.6). Maledjor is in dispute with her neighbours. There are also disputes within members of the land-owning community, including the chief's son and brothers (see 6.3). Land disputes between land-owning family members result in multiple sales of the same parcel of land (see 6.3.3), and improper record-keeping (see 6.3.8) since people want to hide their transactions. Disputes involving the allodial owners often end up in the formal courts because the local dispute resolution committee process breaks down because members of the committee taking sides (see 6.3.7). In New Ningo where there is cooperation between traditional leaders, disputes arising out of illegal sales by land-owning family members are resolved by the local dispute resolution committees (see 6.4.7 and 6.6.6). Amrahia subdivided a parcel they had lease out, and when the land was left fallow for some time, they re-entered it leading to a protracted dispute involving armed land guards (see 6.8.4). Amrahia customary land administrators were apply customary principles to land they had formally leased and hence the conflict. Juxtaposing of formal and customary principles in peri-urban areas is a major cause of disputes.

8.3.5 *Partnership with statutory and professional organisation*

Dysfunctional systems in the Accra case study areas do not employ the same land professionals during the land delivery process. Maledjor and Amrahia had their layouts designed by the Tema Municipal Assembly (see 6.3.4 and 6.8.1). However, during the setting-out process, different surveyors were used (see 6.8.1). In a situation where there is strict adherence to and/or close monitoring of survey standards, the use of different surveyors should not pose a problem, but in Ghana,

where the state-monitoring agency (SMD) lacks equipment and personnel (see 7.4), little supervision is done and substandard work usually goes unnoticed.

The use of different surveyors can easily create overlaps, especially in the absence of a national geodetic control framework. This can lead to dispute and litigation. The use of specific professionals in an area may have adverse effects such as increased fees due to lack of competition and delays in providing services to clients. However, given the inadequacy of the national survey controls networks (LAP, 2010), and inefficient quality control, due to lack of equipment and personnel at SMD (see 6.8.1 and 7.4), the use of specific surveyors operating in an area become advantageous. It may ensure consistency and reduce conflicts.

8.3.6 *Land and gender in dysfunctional patrilineal case studies areas*

Women have no inheritance rights to land in the patrilineal dysfunctional case study areas (see 6.6.1; 6.8.2 and 6.3.1). However, parents can give their daughters land as gifts (6.3.1). Women do not have major roles in land administration. Land proceeds are shared equally between men and women. Females may be given plots for residential purposes (see 6.3.1; 6.6.1 and 6.8.2). However, land remain the property of the respective families, and may not be transferred to their children.

8.4 Functional patrilineal areas

The three functional case study areas in Accra are, like the dysfunctional cases, undergoing rapid urbanisation (see 6.4.2; 6.5.1 and 6.7.2) and rapid changing land use from agricultural to residential use. High rate of urbanisation result from their proximity to major road infrastructure (see 6.4 and 6.7), major educational and/or industrial developments (see 6.5). Land prices in these areas are lower than in the city. They all have electricity supply through the national grid. Some have piped water while others depend on wells and boreholes for water supply. Internal road networks are generally poor in all these areas.

8.4.1 *Land records in functional patrilineal areas*

Keeping records of land transactions is not given much attention in the functional case study areas. Apart from Ablekuma-Afienya, where the chief and the District Assembly keep copies of the same records (see 6.7.3) the others do not give much

attention to record keeping. In Ogbojo (see 6.5.5), the chief started keeping records but stopped midway, entrusting the land surveyor to keep the records. Teiman chief (see 6.4.6), keeps records of transactions that he witnesses (see 6.4.7). Other transactions go unrecorded if clients do not take the initiative to register their titles. Thus, keeping of land records is weak in the functional patrilineal customary case study areas and must be strengthened through partnerships with the formal agencies; professional organisations and use of modern technology (see 8.9.4). Teiman is trying to encourage people to go to the Lands Commission and register their titles. In the meantime, local hard copy records are kept in drawers, and unrecorded and unauthorised sales add to the complications (see 5.3.7). The leadership in Teiman assert that it should not be mandatory for people to go to the Lands Commission to register title because some clients cannot afford it.

8.4.2 *Boundaries with adjoining neighbours*

Ogbojo and Teiman have surveyed and registered their boundaries with the Land Title Registry (see 6.4 and 6.5). There are also no reported boundary disputes at Ablekuma-Afienya. Thus, the functional case study areas are currently at peace with their neighbours. Any boundary disputes would be internal. The traditional leaders (see 6.4.7; 6.5.6 and 6.7.5) normally handle these disputes.

8.4.3 *Traditional management*

Strong and united traditional management practices are characteristic of the functional patrilineal study areas. Leaders are enthusiastic about their work (see 6.4.1), they work in teams (see 6.4.7 and 6.5.3) and meet regularly to discuss developmental progress and to resolve disputes (see 6.4.7; 6.5.6 and 6.7.5). The welfare of the community is paramount in these areas.

8.4.4 *Land litigation*

Teiman and Ogbojo reported a few cases where family members sold land without consulting the family leaders (see 6.4.3; 6.5.3 and 6.5.6). The elders (see 6.4.7; 6.5.6 and 6.7.5) dealt with these cases. Disputants who are not satisfied with the decisions of customary institutions may appeal to the formal courts (see 6.5.6). Generally, however, land litigation cases are minimal in the functional areas. The resolution of

conflicts by traditional leaders indicates that disputants have confidence in the leadership.

8.4.5 *Partnership with statutory and land professionals*

Partnership with land professionals and statutory land institutions give added security of tenure and allows right-holders to access facilities which otherwise are not available to them under customary tenure. Partnerships were therefore beneficial to all stakeholders.

Ablekuma-Afienya had a partnership arrangement with professionals at the District Assembly (see 6.7.2; and 6.7.4) for the design of layout and the monitoring of the surveying and sales aspects of their land delivery process. Ablekuma-Afienya, therefore, has not experienced any major land disputes. The partnership arrangement has the added advantage of duplicate records being kept at the District Assembly (see 6.7.3). Ogbojo has a resident land surveyor who keeps record of land transactions (see 6.5.5). As a check on the records kept by the surveyor, it would be prudent if the chief or some other person kept duplicate versions of the records. This would not only be necessary to crosscheck the information, but also, to serve as a backup copy. There is a loose partnership with Land Title Registration. Teiman has surveyed and registered its boundaries with the Land Title Registry and the chief has been registered as the official representative of the allodial owner (see 6.4.3). Ogbojo advises purchasers to register their transactions at the Title Registry (see 6.5.5), even though, there is no formal agreement with the Registry nor a monitoring system to ensure compliance by clients.

There are no indications of strong partnership arrangements with other statutory land agencies apart from the District Assemblies. This is a weakness in customary land delivery.

8.4.6 *Use of land proceeds in infrastructure development*

Proceeds from land sales are used by land-owning families (see 6.4.1; 6.5.3 and 6.7.1). They are under no obligation to use part of land proceeds of land sales for community development. In Ogbojo (see 6.5.3) an attempt to set aside part of the proceeds of land sales for community development failed.

8.4.7 Land and gender in functional patrilineal case study areas

Just as in the dysfunctional case study areas, men and women do not have equal land rights in the patrilineal case study areas (see 6.4.1; 6.5.3 and 6.7.1). Women cannot inherit land from their fathers or bequest it to their children. Thus, gender issues, does not seem to influence functionality, in patrilineal areas.

8.5 Dysfunctional cases in matrilineal customary areas

Analysis of the matrilineal cases indicates that Ekyem, Boadi and Ejisu are not as functional as Sewua, Asokore Mampong and Appeadu. All the case study areas are characterised by rapid urban development because of the expansion of Kumasi, good road infrastructure and in one case development in educational infrastructure.

8.5.1 Lack of land records

The dysfunctional case study areas in Kumasi reveal that proper records of land transactions are not kept. No records are kept in Ekyem and Boadi (see 6.11.6 and 6.14.6). This is partly due to the multiple sales resulting from the on-going rivalries in the royal family in Boadi, and the boundary dispute between Ekyem and Achiase. The Ejisu narrative reveals that the introduction of CLS has led to improvements in record keeping and improvements in the lease preparation period (see 6.15.4.), however, the backlog of unrecorded cases before the introduction of the CLS is still problematic.

8.5.2 Boundary disputes

Of the dysfunctional case studies in Kumasi, Ekyem is the only one with an outstanding boundary dispute with Achiase. This dispute is under investigation by the Kumasi Traditional Council (see 6.14.1). There are, however, internal conflicts and boundary disputes, resulting from multiple sales and the use of inexperienced land surveyors and other professionals (see 6.11.5 and 6.14.5).

8.5.3 Traditional land management

The matrilineal dysfunctional case studies indicate that traditional land administration is weak. There is leadership crisis at Boadi (see 6.10.3) where rival factions are trying to control land transactions and revenue derived from them.

Sections of the Ekyem community have declared their allegiance to the Achiase Chief (see 6.14.5) whereas the Chief of Ejisu seems to have issues with some elders and the Municipal Assembly (see 6.15.3).

The traditional dispute resolution committees are not operational in either Boadi (see 6.10.7) or Ekyem (see 6.14.5) because of the weakening of the traditional administration system due to the conflicts. Consequently, most disputes are handled by the formal courts. This exacerbates the conflict situation since, unlike the traditional justice system that seeks to promote community harmony (see 3.2.2), the formal court (judgements) declare people guilty or innocent (losers and winners). Good functioning of traditional land management seems to be a major factor in dysfunctionality or functionality of matrilineal customary systems.

8.5.4 *Land litigation*

Land litigation is rampant in Ekyem and Boadi due to the leadership crisis in these areas (see 6.11.3 and 6.14.5). Demolitions have been reported in Ekyem (see 6.14.5) and Ejisu (see 6.15.3). There was also a clash of authority over land allocation between the Municipal Assembly and the Paramount Chief of Ejisu (see 6.15.3). The Kumasi Traditional Council is adjudicating the litigation between Ekyem and Achiase and so a win –win solution is anticipated (see 3.2.2).

8.5.5 *Partnership with statutory land institutions and professionals*

There is virtually no use of statutory land institutions in Ekyem (see 6.14.2). Boadi has consulted land use planners to re-zone and design residential layouts for some farms in the town (see 6.11.4). The work is on going and its impact cannot be assessed by this research. CLS is actively engaged with other land sector agencies like the Lands Registration and OASL in Ejisu (see 6.15.4). This accounts for the improvement in land record keeping and the position of Ejisu as the best of the dysfunctional matrilineal case study areas (see Table 8-3).

8.5.6 *Use of land proceeds in development*

Currently, there are no on-going developmental projects at Ekyem and Boadi, even though the formula for disbursement of land proceeds within the Kumasi Traditional Council (see 6.9) stipulates that a portion of land proceeds go into developing the

community (see 6.13.3). In both Boadi and Ekyem, leaders were accused of misappropriating land proceeds for development (see 6.11.10 and 6.14.4). The chief and elders of Ejisu have on-going developmental projects such as the construction of offices and a market complex (see 6.15.6).

8.5.7 *Gender in dysfunctional matrilineal case studies*

Although women are supposed to have equal land rights with men and be in position of authority with respect to land administration, this was not evident from my interaction with traditional leaders in the case study areas. Boadi is an exception when it comes to gender and land administration (see 6.11). Currently, the Queen Mother has the ultimate responsibility in land administration and management although the caretaker chief is contesting this position (see 6.11). In all other case study areas, land administrators encountered were men. This indicates that men have the ultimate say in land issues. Women are at a disadvantage in matters of land administration even in matrilineal inheritance areas.

8.6 Functional matrilineal case study areas

Diverse factors - economic, technological and environmental, have contributed to urbanisation in the functional case study areas in Kumasi. The announcement of the siting of the Regional Hospital at Sewua increased demand for land in the town in anticipation of economic developments as a spin-off from the development of this regional facility. The proximity of KNUST to Asokore-Mampong and Appeadu and the good road network in the area are linked to rapid urbanisation. These areas are also characterised by the relatively low cost of land as well as peace and security.

8.6.1 *Keeping of land records in functional matrilineal areas*

Chiefs and other entities in all these areas keep land records. In Sewua, the chief and a land surveyor (see 6.12.6) keep manual records. Records at Asokore-Mampong (see 6.11.1 and 6.10.4) are kept digitally. At Appeadu, the chief and the Land Allocation Committee (see 6.13.7) keep records manually. Keeping the same records by different entities may give credibility to the record when they corroborate in a dispute resolution situation. One set of records serves as back up copy for the other, in case one set is destroyed. The chief of Asokore-Mampong relied on the records kept by the land surveyor when his records were destroyed (see 6.10.4).

8.6.2 *Known boundaries*

The functioning matrilineal areas report of knowing their boundaries and having no disputes with their neighbours (see 6.10.3 and 6.13.1) except Sewua, that has a long standing boundary dispute with Ayuom, one of its neighbours (see 6.12.1). The dispute is, however, being handled by the Asantehene, who is the over-Lord of both chiefs (see 6.12.1) through the Kumasi Traditional Council. Decisions taken by the Council will be final and must be accepted by both parties (see 6.12.1). Internal boundary disputes are minimal because of the active participation of land surveyors in the functional areas (see 6.10.4 and 6.12.2).

8.6.3 *Traditional leadership*

Sewua, Asokore Mampong and Appeadu (see 6.13; 6.10.1 and 6.13) exhibited strong signs of cooperation and unity among traditional leaders. All the leaders seemed to command respect from their elders and subjects. These chiefs were busy with visitors each time the researcher went to them (see 6.10 and 6.12). Community members with various needs came to them for assistance. Regular movement of community members to and from the palaces seems to suggest that leaders are approachable and have time for the community members in dealing with issues bothering them. They also have special days fixed for discussing community needs and for resolving all disputes (see 6.10.3; 6.12.1 and 6.13.6). Individual and community interest are concomitantly met in line with the African worldview.

8.6.4 *Land litigation*

There are no on-going cases of litigation with adjoining neighbours in the matrilineal functional areas, apart from the boundary dispute between Sewua and Ayuom (see 6.10.3; 6.12.1; 6.13.6). Disputes within the various townships are reported to the elders. Dispute resolution committees (see 6.10.3, 6.12.1 and 6.13.6) settle most disputes without going to the formal courts.

8.6.5 *Partnership with statutory land institutions and professionals*

Sewua, Asokore Mampong and Appeadu employ professionals in land delivery processes (see 6.10.4, 6.12.2 and 6.13.2). They each have specific land professionals they engage. They also encourage clients to register their titles with ALS and the

Lands Commission. The case studies do not indicate any direct engagement with the statutory land institutions.

8.6.6 Use of land proceeds in community development

The traditional leaders in all the functional areas in the Kumasi case studies are development oriented (see 6.10.5, 6.12.5 and 6.13.5). In line with the directive that a portion of land proceeds be used for developmental purposes (see 6.9), there are visible signs of development in these areas (see 6.10.5, 6.12.5 and 6.13.5). The evidence indicates that traditional leaders in matrilineal functional areas, use part of their land proceeds for local development.

Asokore Mampong and Appeadu have developed funeral grounds (see 6.10.5 and 6.13.5) and Sewua has ruled that before any corpse is buried in the town the mortal remains of the should have been laid in state in the family house of the dead for at least an hour (see 6.12.5). This gives an indication of respect for the dead, in line with the African worldview.

8.6.7 Gender and land in the matrilineal functional case study areas

All the matrilineal functional case study areas assert that there is no discrimination against women concerning land rights (see 6.10.1, 6.12.4 and 6.13.4). A careful analysis of the cases indicates traces of inequality. A traditional leader asserts that men have ultimate power over land; however, this power is exercised in the interests of women (see 6.13.4) because men cannot bequeath land to their children but rather to their maternal nephews or nieces.

Just as in the dysfunctional matrilineal case study areas, evidence from the data suggests that women have no major roles in customary land administration or management.

8.7 General characteristics of functional and dysfunctional systems

There are basic similarities and differences in patrilineal and matrilineal systems as evidenced in the case studies from Accra and Kumasi. Analyses of the case studies (see 8.4.7, 8.5.7 and 8.6.7) seem to suggest that gender issues do not significantly contribute to either functionality or dysfunctionality in the case study areas. Data in

all the case study areas indicates that women do not play a significant administrative role in customary areas. These findings corroborate the literature on gender in customary tenure (see 2.2.9).

8.7.1 Differences between patrilineal and matrilineal systems

A few differences that can be highlighted between patrilineal and matrilineal systems in the case study areas as shown in Table 8-6. These differences in themselves alone do not account for functionality or dysfunctionality in customary systems. The subsequent sections discuss similarities in dysfunctional and functional systems irrespective of the inheritance system.

Table 8-5: Differences between patrilineal and matrilineal case study areas

Patrilineal customary system	Matrilineal customary systems
Family heads control land administration	Chiefs control land administration and allocation
Planning and control at family level,	Central planning controlled by chief
Using part of land sales for community development is optional	Mandatory component of land sales for community development
Women cannot inherit land, they may be given user rights	Women may inherit land but have very little decision making powers relating to its management

Table 8-6: Differences between patrilineal and matrilineal case study areas

8.7.2 Similarities of dysfunctional systems from matrilineal and patrilineal areas

The case studies indicate that several factors contribute to dysfunctionality in peri-urban customary areas. These factors cut across patrilineal and matrilineal lines. Among these characteristics are:

Weak traditional leadership: - Several factors may lead to weak traditional leadership such as conflicts within the royal family (see 6.11.3 and 6.14.5), autocratic leadership styles (see 6.3.6 and 6.15.3). The complexity of customary land delivery requires a crème of dedicated and diligent leaders devoted to the precepts of the African worldview (see 4.3). Leaders should seek the welfare and development of their communities (see 6.13.5), placing community interest over personal gains.

Boundary disputes: - A common feature of dysfunctional customary areas is boundary disputes (see 6.3.3, 6.8.4, 6.11.3, 6.14.5, 6.15.5 & 6.18). Either boundary disputes result from conflicts with adjoining customary areas or internal disputes due to multiple sales, the use of non-professionals in the land delivery process and lack of monitoring of clients during construction to ensure they keep to their boundaries (see Figure 6.5 - Amrahia). Boundary disputes are linked to weak traditional leadership.

Land litigations: - Land litigation is rampant in the dysfunctional areas, mainly because of the breakdown of customary dispute resolution committees (see 6.3.6, 6.8.4, 6.11.7 and 6.14.5). Customary dispute resolution plays an important role in customary land delivery. In peri-urban customary areas, disputes are frequent. Hence, the absence of customary dispute resolution mechanisms aggravates the situation. All land disputes in such cases have to go to the formal courts. However, court rulings do not favour community cohesion; they are based on ‘the winner takes all’ principle. This normally results in protracted conflict between families while customary resolution processes seek a win-win solution to disputes (see 3.2.2). The lack of functional customary dispute resolution committee is related to weak traditional leadership.

Lack of partnership with land professionals: - Formerly, customary land delivery did not require the use of professionals such as surveyors and planners because populations were small and homogenous (see 6.4.2, 6.7.2, and 6.10.1). Land use such as subsistence agriculture, housing, markets and burial grounds were common knowledge to community members and did not require extensive planning and demarcation. However, with changing conditions, especially in peri-urban customary areas, use of professionals is crucial to avoid conflicts and ensure secure tenure for

all land users. Use of professionals may ensure conformity with formal rules in the peri-urban areas.

Inadequate record keeping: - Occupancy and the memory of witnesses have been the historic means of recording customary tenure. However, these are inadequate in the present day (see 3.2.3). With increased migration, compositions of communities are changing and community cohesion is breaking down, as communities become heterogeneous (see 6.5.6). Formal systems of record keeping are necessary (see 6.10.1) and must be adapted for peaceful peri-urban development and co-existence in the midst of heterogeneous communities.

8.7.3 Similarities of functional systems from matrilineal and patrilineal areas

Functional systems in the case study areas exhibited common characteristics in both the patrilineal and matrilineal areas such as able traditional leadership, minimal boundary disputes, partnership with land professionals in the delivery process, and efficient customary conflict resolution.

Able traditional leadership: - Functional customary case study areas are governed by able traditional leaders who work as teams (see 6.4.1, 6.5, 6.7.2 and 6.10.1). They have shared values and treated each other with respect. For example, the chief of Ablekuma Afienya refused to grant me any interviews until his elders were present. Leaders, in these communities are respected by their subjects (see 6.10.1 and 6.13). These leaders live in the communities and are approachable (see 6.10.1 and 6.13). This was evident by the number of people who interrupted the interviewing sessions.

Minimal boundary disputes: - In all the functional areas, there were no reported boundary disputes. Except in Sewua, where a dispute with one of its neighbours (Ayomu) is under investigation by the Kumasi Traditional Council (see 6.12.1). Use of land professionals (see 6.5.5, 6.10.4, 6.12.2 and 6.13.2), control of illegal sales by members of the land-owning families and transparent leadership contribute to the reduction of boundary disputes in functional areas (see 6.4.3).

Efficient customary dispute resolution committees: - All the functional areas have active dispute resolution committees (see 6.4.7, 6.5.6, 6.7.5, 6.10.3, 6.12.7 and

6.13.6). The compositions of these committees are made up of indigenes in all the case study areas except in Sewua where the Assemblyman (elected local government representative) is a member of the committee (see 6.12.7). The committees are responsible for the settlement of disputes in the various communities for both indigenes and strangers. The chief or his representative chairs them. Customary conflict resolution committees are fast, cheap, and seek to entrench community harmony by seeking the best interests of the individuals in accordance with those of the community. This is illustrated by the narrative in Sewua (see 6.12.7) dealing with the resolution of a dispute between two women.

Partnership with land professionals and statutory institutions: Functional customary systems work in close association with land professionals. They worked with land surveyors, planners and other professionals from the built environment (see 6.5.5, 6.10.4, 6.12.2 and 6.13.2). Teiman is the only functional case study area that engages land professionals when necessary (see 6.4.5). The inability of SMD of the Land Commission (see 7.3) and the Town and Country Planning Department (see 7.5) to carry out their mandates make the use of dedicated land professionals in customary land delivery necessary to ensure consistency of standards, this however, may have adverse effects such as prohibitive costs and delays in executing projects.

Land records: - Land records are kept in digital or manual forms in the functional areas. Apart from Asokore Mampong (see 6.10.1) that has a complete record of all its land transactions and a backup with the land surveyor, land records are incomplete in the other areas (see 6.4.6, 6.5.5, 6.7.3, 6.12.6 and 6.13.7). In most of the areas, sales undertaken by unauthorised family members are not reported to the traditional leaders and therefore are not captured in their records. There is no indication of formal record keeping of indigenous rights in the case study areas. Land records of indigenes should be captured. There should be adequate records about subdivisions and subsequent transfer to strangers. Availability of such records would make it easier to trace the rights of future indigenous generations in their ancestral land.

8.8 Assessing functional customary systems using 7Es performance indicators

8.8.1 *Efficiency – minimising the use of resources*

Functional areas improved their efficiency through several processes such as partnership with land professionals (see 6.10.4, 6.12.2 and 6.13.2) and statutory institutions (see 6.4.6, 6.5.5 and 6.7.2). These arrangements assisted the leaders in planning and surveying the areas to be leased. The functional systems were also efficient in dispute resolution (see 6.4.7, 6.5.6, 6.7.5, 6.10.3, 6.12.7 and 6.13.6). However, the credibility of dispute resolution committees may be improved by expanding the committee to include women and strangers. Keeping of land records is not given much attention (see 6.4.6, 6.5.5, 6.12.6 and 6.13.7). Some, typical customary practices were the keeping of mental records of land transactions. Where chiefs keep land records, there are usually no backup copies (see 6.4.6). This could lead to multiple sales (see 6.6.5), disputes and inefficiency.

8.8.2 *Efficacy and effectiveness - delivery*

Customary urban land delivery is a major provider of urban land in peri-urban areas (see 2.2.6). The processes for urban land delivery are simple and understood by stakeholders since they are culturally embedded and have been practiced for many years (see 6.3.1). In addition, traditional leaders (land administrators) are easily accessible. Incorporating statutory land agencies (see 6.16, 6.17 and 6.18) and use of professionals in customary land delivery, greatly improves the land delivery process (see 6.10.4). The functional areas are effective in dispute resolution (see 6.4.7, 6.5.6, 6.7.5, 6.10.3, 6.12.7 and 6.13.6) thereby reducing litigation and ensuring security for land users.

8.8.3 *Elegance – acceptability to stakeholders*

Customary land delivery is indispensable for urban development in Ghana, since it is cheaper and more affordable to the urban majority who are poor (see 3.5.1, 6.4.2 and 6.7.2). The readiness with which statutory institutions and land professionals are willing to assist customary owners to enhance urban development is an indication of its relevance (see 6.4.6, 6.5.5 and 6.7.2, 6.10.4, 6.12.2 and 6.13.2). Efficient traditional leadership contributes significantly in attracting land seekers to an area and improves the elegance of the system, however, where traditional leaders are not

transparent with their dealing with indigenes, vices such as multiple sales (see 6.14.3), land guards (6.8.4) and disputes (see 6.11.3) scare away land seekers and negatively impact acceptability of the system. Customary urban land is cheaper than land provided by the formal system (see 6.7.1). Most customary client find it acceptable however acceptability may be further improved with efficiency delivery devoid of land disputes.

8.8.4 Empowerment – contribution by stakeholders to decision making and action

In most of the case study areas, planning of land use changes were undertaken by chiefs, elders (see 6.12.2 and 6.13.2) and sometimes professionals from the District Assemblies (see 6.3.4, 6.7.2, 6.8.1, 6.10.1 and 6.10.2). Besides these groups, there is very little evidence indicating empowerment of other stakeholders in the delivery of peri-urban land. In most areas, the majority of stakeholders have very little input in the decision making process. Although, elders are supposed to represent various indigenous groups, and consult with their constituencies on regular basis, there seems to be lack of information flow and this result in litigation (see 6.6.6; 6.7.4, and 6.8.4). Functional customary systems can improve their services by building capacity in the community and improving on information flow on all aspects of peri-urban land delivery.

8.8.5 Emancipation – assisting the marginalized/disadvantaged.

Customary land delivery serves the needs of the marginalised in urban communities (see 3.4.1; 3.4.5; 6.7.2 and 6.11.2). There are, however, elements of discrimination against poor indigenes, women and strangers, in some areas (see 6.6.1, 6.11.4 & 6.14.5). Indigenous women complain about the unfair treatment meted out to them when it comes to leasing out family land (see 6.3.1) and administering it (see 6.6.1). Sometimes indigenes, who are not from the royal families, may lose their land rights (see 6.6.4; 6.11.4).

8.8.6 Exception – ability to hear and act on suppressed views

There is an outcry against customary tenure because of the limited rights for women (see 2.2.10) and the erosion of the rights of poor indigenous communities (see 3.3.2). The case study data indicate there is a gradual move to rectify the situation within

the constraints of customary tenure. In all the case study areas, women have access to land either as individuals or through male relatives. Results from some patrilineal areas indicate women are given land as gifts (see 6.3.1 & 6.4.1). Where there is still plenty of land (see 6.3.1), the woman and her family are given land to build and to farm. Customary dispute resolution committees are avenues where suppressed views can be expressed (see 16.15.5) although there is no guarantee that such views may be acted on, since decisions are arrived on, based on customary practices and by consensus.

8.8.7 *Emotion- doing what feels right*

This concept was difficult to detect in the case studies. However, in the resolution of disputes through customary structures and processes, it is likely to play an important role.

8.9 Two Stream analysis of functional customary urban delivery

Customary urban land delivery is a complex endeavour, which must be undertaken holistically to ensure functionality. In section 5.3.2.3, two-stream analysis was identified as suitable for data analysis. PESTLE (see 5.3.2.3) was identified as crucial for holistic analysis of systems relevant for functional customary administration. The PESTLE analysis is used to identify the systems for the second stage, which uses the two streams of SSM. Since this is not an action research the full set of principles were not applied

8.9.1 *Political aspect*

Customary peri-urban land delivery involves different stakeholders: traditional leaders, local government, national government, indigenes and strangers. Legislation, policies and guidelines from formal government (see **Error! Reference source not found., Error! Reference source not found.** and Figure 8-3) are necessary to ensure that minority rights are not infringed upon (see 6.5.4 and 6.16.1). A compromise approach to customary leadership (see 2.2.8), by national and local government is recommended, where rights of members of the group are upheld through dialogue. The need to reach a consensus about powers of traditional leaders in land delivery should be balanced by the need for recognition of land rights of all members of the community including women, poor indigenes and strangers. This

could be achieved through partnership arrangements, where all levels of government work together for preservation of land rights and records (see 6.6.2 and 6.10.1), and planned physical and infrastructural development (see 6.4.5, 6.5.4; 6.7.4; 6.15.2 and 6.19). Adherence to the principles of good governance in land administration is crucial for peri-urban customary land rights.

8.9.2 *Economic aspects*

A holistic approach to prosperity, which takes into consideration the pro-poor peri-urban population, is vital for functional urban land delivery. Economic growth, provision of social services and infrastructural development (see 6.5.4) should be planned in customary areas if they are to be sustainable and devoid of conflicts between indigenes and strangers. Skill training and provision of alternative livelihoods for those who lose their land rights is crucial (see 6.3.4; 6.4.9 and 6.5.1). Enjoyment of economic benefits for customary owners should be in perpetuity, in the form of shares or investment (see 6.5.2). Systems identified as relevant for holistic economic development are land development, formal and informal businesses and subsistence farming (see **Error! Reference source not found., REF _Ref346716074 \h * MERGEFORMAT Error! Reference source not found.** and Figure 8-3).

8.9.3 *Social aspects*

Religious, social and political conceptions of land are interwoven (see 4.2). Customary land tenure is deeply rooted in the African worldview (see 6.4.1 and 6.12.5). Belief in the deity of land and the intergenerational ownership of land (see 6.3.1; 6.5 and 6.14.3) makes it a sacred heritage. In addition, the collective good and social cohesion of the community serves as a deterrent to abuse of land administration processes. Functional customary peri-urban land delivery can contribute to social cohesion under conditions of rapid urban change. The socio-cultural value of land, connected to people's identities, status and social network should be preserved. Freehold tenure destroys all these values and makes the community socially poorer. Considerable attention should be given to the interests of indigenes; strangers and other social associations in assessing and promoting functional customary land delivery (see **Error! Reference source not found.,**

REF _Ref346716074 \h * MERGEFORMAT **Error! Reference source not found.** and Figure 8-3).

8.9.4 Technological aspects

Functional customary systems take advantage of technological development to improve on customary land delivery and administration. Professionals and modern equipment are used (see 6.9.3; 6.10.4) in the processes of land delivery. For example, global navigation satellite (GNSS) receivers and total stations are used for surveying while land records are kept digitally using geographic information systems (GIS). Such systems make data acquisition, processing, management, and updating a lot easier than the traditional systems are capable of doing. Again, boundary disputes are minimised and relocation of boundaries, once they have been surveyed, becomes easier. With advanced technology and equipment, infrastructural services can be provided to improve sanitation and reduce incidence of flooding (see **Error! eference source not found.** and Figure 8-3).

8.9.5 Legal Aspect

All the case study areas operate in plural legal environments. There are customary rules that draw their authority from socio-cultural belief systems (see 4.3). These are dynamic, adaptable and flexible and are able to respond to cultural, demographic, political and environmental shifts (see 3.2.1 and 3.2.2). Formal systems of law are at national level and cannot respond to local nuances. Customary justice systems have flexible rules and procedures. They are accessible, affordable, and comprehensible and can quickly cope with land issues fast but they may seem to lack coherence and predictability because they seek social harmony. On the other hand, the formal courts seek justice and may punish wrongdoing irrespective of the consequences for community cohesion. Court processes may be expensive, may involve complex processes and may be far from the community. They may be the only option left for litigants in areas where the customary systems have lost their credibility (see 6.3.7 and 6.8.4). A systems approach to legal issues should promote the formulation of relevant laws, institutions and policies, by relevant stakeholders, to improve access to and administration of customary land for all citizens, as enshrined in the constitution.

8.9.6 Environmental aspect

Environmental considerations are currently not receiving enough attention. Land use changes, sanitation and flooding are major environmental factors that should be incorporated into the process of urban land delivery in customary areas. There is the need to preserve natural environmental systems like wetlands. The process of land development should ensure necessary steps are taken to promote environmental conservation. Provision should be made for good drainage and sanitation systems to avoid the situation at Ablekuma-Afienya (Figure 6-3).

The above PESTLE analysis feeds into the relevant systems in the two streams model of SSM. The remaining parts of the SSM two streams model are historical context, real world situation and cultural analysis. This information is obtained from the case study data.

The SSM is used in action research. As such the initial/real situation systems on the far right are left blank. This would be completed in a future study in which the model developed would be used to plan an interaction in a customary land administration to improve its functionality.

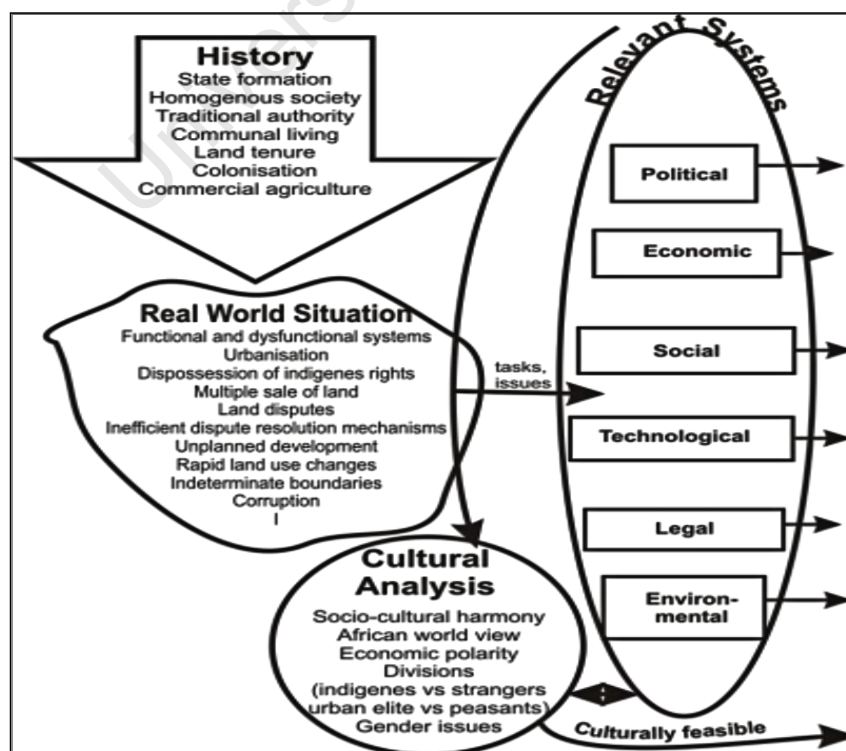


Figure 8-1: Two streams analysis of functional urban customary tenure (Source: Jackson, 2003:189)

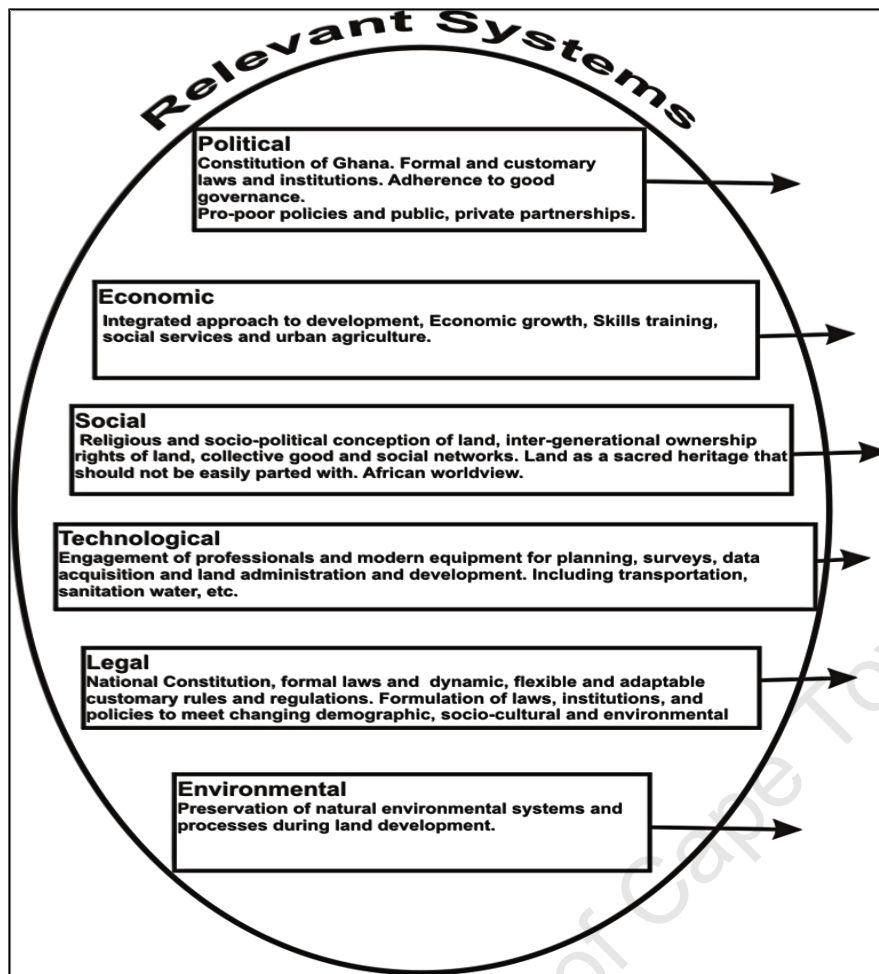


Figure 8-2: Two streams analysis of functional customary systems -relevant systems
(source: Jackson, 2003:189)

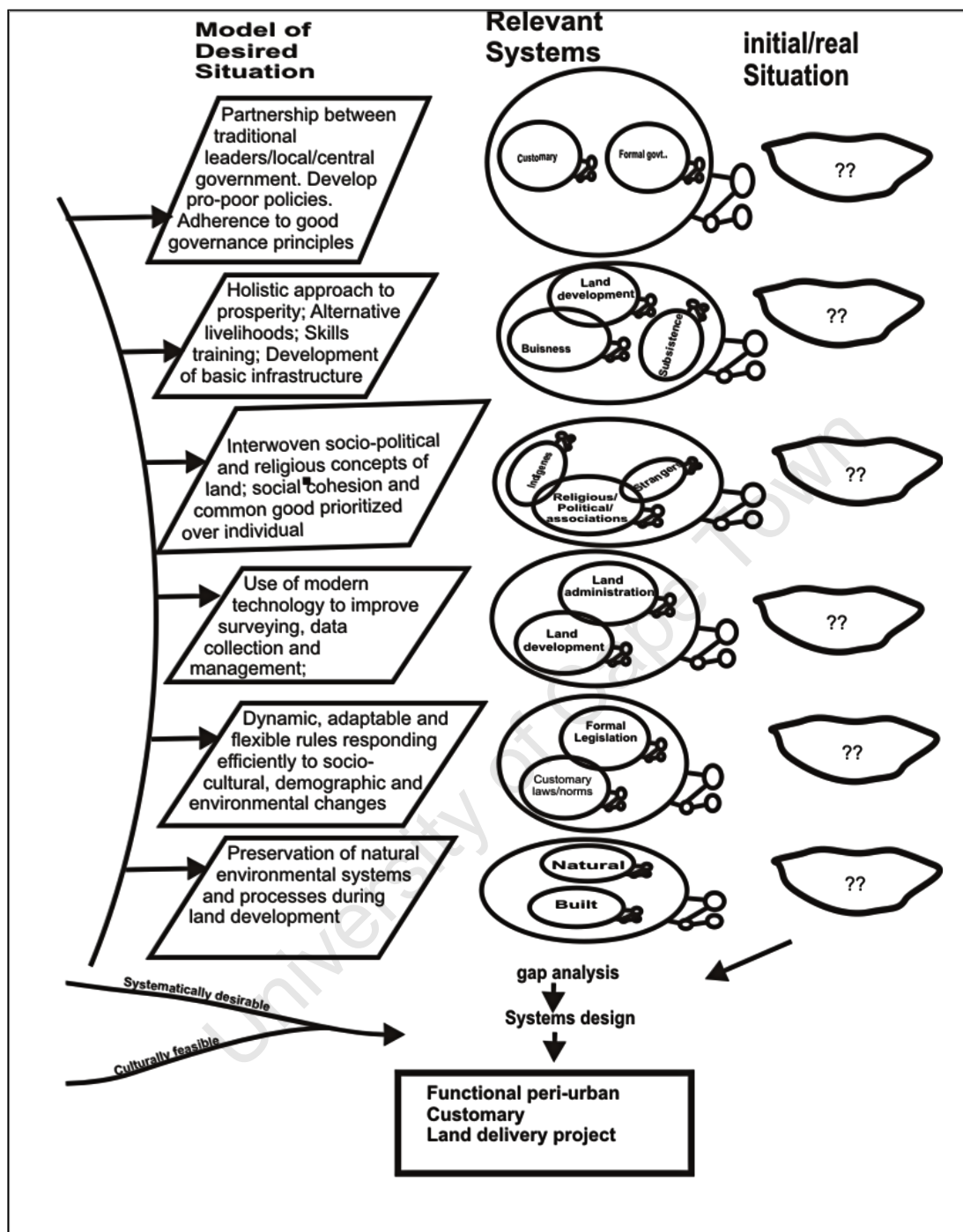


Figure 8-3: Logic analysis of functional urban customary tenure (source Jackson, 2003, 189)

8.10 Chapter Summary

Good governance criteria have been used to classify functional and dysfunctional customary systems. Dysfunctional customary areas are characterised by weak traditional leadership because of the breakdown of the fundamental aspects of the African worldview. This is linked to land disputes and sometimes factions within communities. Lack of partnerships between statutory institutions, land professionals, and traditional leaders is also a major factor in dysfunctionality. On the other hand, functional customary systems exhibit united traditional leadership working with their communities cordially. In such areas there are minimal boundary disputes, strong partnerships with statutory institutions and land professionals, efficient customary dispute resolution mechanisms and efforts are made to keep up-to-date records of land transactions.

Participation and accountability scored poorly in both patrilineal and matrilineal case study areas although the score in the matrilineal areas were higher than that of the patrilineal areas. This is partly due to the hierarchy of traditional authority in the matrilineal areas. It was also evidenced that gender inequality as far as land rights are concerned is a problem in both patrilineal and matrilineal systems.

The use of the 7Es performance indicators in the analysis shows that functional customary areas need improvement in areas of empowerment, emancipation and a lot more needs to be done on exception. These results corroborate the previous finding about poor participation and accountability in urban customary areas.

The two streams analysis of SSM has been used to develop a model to assess and plan interventions to improve functional customary tenure for peri-urban areas taking into consideration the political, economic, social, technological, legal and environmental factors. The use of the model for such purposes is likely to improve holistic analysis of the customary land administration system and when used in conjunction with the 7Es framework, change with a greater chance of sustainable positive outcomes can be expected.

9 CONCLUSIONS AND RECOMMENDATIONS

9.1 Introduction

This thesis has developed a framework for functional peri-urban customary land administration. Initially the investigation identified an appropriate philosophical paradigm for studying urban customary tenure and the need to incorporate the African worldview of land in the study of customary land tenure in Africa. This was followed by a multiple case study analysis of Ghanaian cases disaggregated into patrilineal and matrilineal as well as dysfunctional and functional cases. The main contribution of this research emerged from the case study analysis, and the development of a model for assessing and promoting functional peri-urban customary tenure.

9.2 Research Questions

The research questions that necessitated this study are answered in the course of the study and are reflected below.

9.2.1 *Why is customary tenure breaking down in the face of rapid urbanisation?*

Several factors have contributed to the breakdown of customary tenure in sub-Saharan Africa. Urbanisation has influenced the rate of economic development, demography, and social settings of customary areas especially those adjacent to urban areas. These changes have immense effect on the social milieu of peri-urban areas (see 2.2.4, 6.4.2, 6.5, 6.6.2, and 6.10.1).

Urbanisation has changed the social settings of customary tenure. Economic gain has gained prominence over social cohesion. Privatization of customary land and disregard for the basic tenets of the African worldview has destroyed social values and weakened social networks and left customary tenure poorer (see 2.2.2, 6.6, 6.11.3 and 6.14.5).

Customary tenure thrives on flexible rules, which can be re-invented in response to social circumstances. Fixed rigid rules impede the development of customary tenure (see 2.2.3). Historically, there has been a conscious effort on the part of colonial and post-colonial governments to suppress or eradicate customary tenure (see **Error!**

reference source not found.) Simplistic (positivist) study of customary tenure misguided the development of customary tenure (see 3.3). Customary tenure is multifaceted but most studies concentrated on the economic or technical aspects leaving the complex socio-cultural aspects. This made research findings and recommendations unsustainable (see 3.3). Consequently, customary tenure was considered primitive or an evolutionary stage in land tenure development that will eventually evolve into freehold. This led to the development of anti-customary tenure ideologies (see 2.2.3 and 3.3) through legislation and suppression of customary institutions. These actions have hampered the development of customary tenure, leading to functional and dysfunctional systems (see 8.2.2).

9.2.2 What are the indicators of functional systems compared to dysfunctional systems?

Table 9-1 lists indicators that are associated with functional and dysfunctional systems in the case study areas. Gender sensitivity did not have any significant influence on functionality.

Table 9-1: Indicators of functional and dysfunctional systems

Functional customary systems	Dysfunctional Customary systems
Stable traditional leadership, good working relationships, upholding of traditional laws and customs. Community welfare placed above self-interest of leaders (.see 6.12, 6.13, and 7.7.3)	Fragile traditional leadership characterized by leadership conflicts, factions and autocratic leadership style. Personal interest of leaders overrides that of community. Customs and traditions are disregarded (see 6.3.6, 6.11.3 6.13.5 and 7.7.2).
Minimal boundary disputes: Boundary disputes are virtually non-existent in functional areas because leaders collaborate with professionals in the land delivery process and dispute resolution	Boundary disputes results from conflicts with adjoining communities, internal disputes due to multiple sales, use of non-professionals and lack of monitoring of clients by professionals during land

committees are active (see.6.5, 6.7.4, 6.10.3, 6.13.6 and 7.7.3).	development (see 6.3.6, 6.11.3, 6.14.1 and 7.7.2).
Efficient land dispute resolutions: - There are active dispute resolution committees. Although the committees are predominantly composed of indigenes, they settle disputes for both indigenes and strangers. Disputants have confidence in committees and the committees are the first port of call if disputes arise. They ensure community harmony and social cohesion (see 6.4.8, 6.5.6., 6.10.3 and 6.12.7).	Land litigations: There is breakdown of customary land dispute resolution committees; consequently, all disputes go to the formal courts. However, formal court procedures and rulings do not enhance community cohesion but rather result in protracted litigation between families (see 6.3.7, 6.7.4, 6.11.7, 6.14.5 and 7.7.2).
Use of land professionals and statutory land institutions like the Town and Country Planning, SMD of Lands Commissions and the District Assemblies aid in planning, surveying and data capturing (see 6.5.5, 6.7.2, 6.10.4 and 7.7.3).	Lack of partnerships with professionals or statutory land bodies: The lack of pro-activeness on the part of statutory institutions and ineffective traditional leadership promotes unsustainable development (6.3.7, 6.11.5, 6.14.2 and 7.7.2).
Digital or manual land records are kept. However, a lot needs to be done in keeping up-to-date land records. Most of the functional areas did not keep backup copies of data (see 6.5.5, 6.7.3, 6.10. 4, 6.12.5 and 7.7.3).	The dysfunctional systems still depend on memory and witnesses as in the days of old. Where there are factions, land transactions are held in transaction secrecy and so no written records are kept. Where written records are kept, they are neither updated nor backed up (see 6.3.8, 6.6.5, 6.11.6 6.14.6 and 7.7.2).

9.2.3 *What determines (causes) whether certain systems are functional or not?*

The responsibility of customary land administration rests with traditional authority in the form of chiefs or family heads. In recent times, some traditional authorities use their trusteeship position to amass wealth by depriving indigenes of their land rights and extorting money from strangers in areas where tenets of good governance are not practiced (see 3.5). Good governance criteria are found to be very useful in classifying functional and dysfunctional customary systems (see 3.5).

Functional customary areas are efficient and effective. Well-known customary rules and procedures are used. Competent people are engaged in the process and land rights of the poor and marginalised protected. Where there is a need to make changes to existing rules, such information is disseminated in the community and changes aspiring for the greater good of the community are upheld. Conflict resolution and appeal processes are clear and opened to community members (see 7.3.3).

Accountability is another major factor for functional systems. Leaders responsible for customary administration should be accountable to the community in all aspects of their work. Accountability scored low in both matrilineal (see 7.2.3) and patrilineal (see 7.2.4) areas due to the gradual erosion of customary values and principles in peri-urban areas.

Functional customary areas exhibit quality of equity and fairness in their dealings with the land-owning community and strangers. Indigenes and strangers should be protected in all their land transactions. Land and natural resources should be used to create wealth to benefit the entire community. Active involvement of community members in all aspects of customary land administration is crucial to ensure functionality. Functional systems collaborate with various land professionals, statutory land and local government institutions and communities in land development and administration.

Instability in traditional administration is a major threat to functional customary systems. Dysfunctional areas are characterised by rebellions, insurgencies, and factionalism. Customary land administration cannot function well where the youth are at loggerheads with traditional leaders (see 7.5.3), where there is social unrest

between indigenes and strangers (see **Error! Reference source not found.**) or here the ruling family is divided (see 7.3.3 and 7.5.3).

Functional areas are relatively free from land conflicts; customary systems work well. There are minimal boundary disputes (see 7.4.4), demolitions and multiple sales because the price of land is affordable to indigenes and strangers.

9.2.4 Are aspects which contribute to functionality related to either matriarchal or patriarchal structures

Matriarchal or patriarchal systems do not seem to have any major impact on functionality or dysfunctionality of the customary systems studied (see 7.3.6, 7.4.7, 7.5.7 and 7.6.7). Males in both matriarchal and patriarchal case study areas dominate customary land administration. Indigenous women in matriarchal areas gain access to land in peri-urban areas, through their family heads who are mostly men (see **Error! Reference source not found.**). Land is usually given to family members who have the ability to develop. Similarly, patriarchal customary systems make land available to women who are rich enough to develop the land, usually through gifts (see **Error! Reference source not found.**). Thus, neither matriarchal nor patriarchal systems of customary tenure in Ghana favour women.

9.2.5 What theoretical framework is appropriate for investigating access to land in peri-urban Ghana?

Most studies on customary land tenure in sub-Saharan Africa, and particularly in Ghana, have been silent on the theoretical frameworks used. Most of the works on formalisation of customary tenure, usually through conversion to registered cadastral systems, suggests a positivist theoretical framework while discussions on land tenure have been based on interpretivist philosophy. This study emphasises the need to assess and analyse customary tenure, taking into consideration socio-religious, economic and historical developments of customary tenure in peri-urban environment. Hence, the use of critical realism has been shown to be suitable when combined with the African worldview on land which needs to accommodate ownership of land by ancestors and generations yet unborn. Critical realism facilitates mixed method approach to customary tenure research. It is also compatible with social systems thinking which is partly used in the analysis and modelling. The

goal-based good governance approach to analysis is also used even though it is a positivist instrument showing the versatility of critical realism.

9.2.6 *What approaches are available, and have been used, and to what effect, in cases of modelling and analysing peri-urban land access in Ghana, Africa and elsewhere, particularly for customary areas?*

In section **Error! Reference source not found.**, it was noted that there have been several consistent attempts at meddling in customary land tenure to *make it more economically productive*. Various land reform programmes were instituted by colonial and post-colonial governments to introduce *individual freehold or leasehold* tenure through *land titling*. In Ghana, the 1992 Constitution abolishes the creation of freehold and promotes leasehold instead (Government of Ghana, 1992). Leasehold may be more acceptable to customary land administrators, problems may arise if the lessee leaves the land unused over long periods (see 6.8.4). Landmark features of the titling programmes are the dispossession of the land rights of the poor and marginalised community members (see 2.2.2), and the creation of bureaucratic institutions that lack financial, human and technical capacity and are socio-culturally misplaced (see 4.1.1).

The other extreme end of the reform of customary tenure is the anti-market model (see 4.1.2). Here, customary land was taken over by the state and redistributed to government and parastate organisations. Again, the key underlying factor was economic development (see 3.4.2). Customary institutions were abolished under the anti-market model; however, customary tenure could not be eradicated.

Most colonial administrations introduced tenure pluralism in which statutory models were retained for urban areas and customary tenure was reserved for rural communities where land values were low (see 3.4.3). The problem with this model is that there is no clear demarcation between urban and rural communities (see 2.2.5). Confusion arises in peri-urban areas which extend into rural areas. This study advocates for partnership approaches and co-existence of multiple tenure types.

The adaptation model asserts that customary tenure is adaptable and flexible and therefore able to cope with changing conditions. Customary tenure can therefore

meet the challenges of urban development and also the socio-cultural aspiration of communities.

Innovations such as the Land Boards in Botswana, and the Starter and Landhold Titles in Namibia are efforts to formalise urban or peri-urban customary tenure based purely on formal titling systems. Although they are still under development, they face various challenges (see 3.4.5). They have not fully fulfilled the aspiration of the poor communities however; some good processes can be adopted to improve customary peri-urban land administration.

9.2.7 Is a systems approach to modelling and analysis suitable to address the research questions? Has it been done before in Ghana or other similar countries?

The systems approach was found to be useful and appropriate in analysing and modelling functional customary systems in Ghana (see 7.9). A social systems approach was recommended (see 5.3.2). The complexity of peri-urban customary tenure is such that it requires a holistic analysis of all aspects. Benefits of this approach are the ability to integrate natural and social systems in analyses in understanding peri-urban land administration on its own and not simply a sum of its component parts.

There is no evidence that system approaches have been used previously in Ghana to investigate customary tenure. However, Nkwae (2006) investigated land tenure and land administration options in peri-urban areas in Southern Africa using SSM and the 3Es (Efficacy, efficiency effectiveness) for the analysis (see 2.5.2). Whittal (2008) also used SSM and viable systems model (VSM) to analyse a fiscal cadastral project in Cape Town, South Africa and found it useful (see 2.5.2).

9.2.8 What systems tools are available and are suitable to model and analyse customary land access and administration systems? What have been used before? How were they used and to what effect? Which other systems tools may be useful?

The two streams model of SSM (see 5.3) which gives equal attention to cultural and logic based stream of analyses have been useful. It reflects multiple perspective of

the problem and encourages all stakeholders to dialogue for a holistic solution (see 8.9). Using the two streams of SSM with PESTLE analysis and 7Es has enabled holistic analyses of customary systems and the development of the model for assessing functional systems (see Figure 8-1, Figure 8-2 and Figure 8-3). Nkwae (2006) used rich pictures of SSM to analyse land tenure and administration options (freehold, leasehold and customary tenure) in Southern Africa. The rich picture option does not give much attention to the cultural stream (Jackson, 2003).

9.3 Chapter summary

This research has developed a model for analysis of functional peri-urban customary tenure. The model is based on a critical realist paradigm in combination with African worldview on land tenure. This appears to be the first time the African worldview, has been used to research customary tenure in Ghana, and this is a contribution to knowledge. The systems approach and mixed method tools have been used to understand current customary systems, model desired systems, which can be used to identify necessary interventions to facilitate functionality of peri-urban customary tenure and land administration.

Functional customary tenure and land administration systems provide affordable land for the urban poor. They promote social cohesion and enhance development. Customary land rights are much deeper than enjoying the economic benefits derived from the land; they are tied to past and future aspirations of customary communities. Current policies focussed on evolution of customary tenure. Promoting formal freehold title threatens the tenure type with extinction. The result of this is failure to capture the benefits of the tenure type and its unique offering, particularly in areas where the African worldview of land predominates. Concomitant marginalization of the poor and failure to accommodate the land aspirations of the youth and future generations may have unforeseen negative consequences.

9.4 Further research

Good governance in customary land tenure and land administration is likely to enhance peri-urban customary systems. Customary institutions like ALS have most of these principles already built into their administrative structure. However, certain areas need strengthening such as accountability, participation, equity and fairness.

Further research on how to improve accountability, participation, equity and fairness in peri-urban customary systems is recommended.

The model developed for assessing functionality in this research has been built using case study material from Accra (patrilineal) and Kumasi (matrilineal) cases. The study may be biased towards the case study areas, since customary land administration practices are not homogenous. Further investigations in other customary areas in Ghana and elsewhere may provide new data to strengthen the findings of this research.

Functional peri-urban customary systems are highly dependent on the best of both African and Western worldviews. Partnership between land professionals, statutory organisations and traditional leaders are to ensure equitable distribution of benefits to all customary stakeholders without compromising the flexibility of customary land tenure.

The introduction of leasehold rather than freehold is more in tune with the African worldview (see 4.3). However, in the matrilineal case study areas, chiefs rather than family heads, hold the allodial title. Thus, all leases to strangers revert to the chief. In the absence of detailed cadastral base maps of original beneficial families, it may be difficult to trace descendants of original customary owners. Further work is required to ascertain how to ensure continuous enjoyment of land rights of indigenes and their descendants in line with the African worldview without jeopardizing economic development of peri-urban communities.

Interactive planning (see 5.3.2.2) may be useful for customary land tenure and administration research. Its ability to cope with messes rising out of complexity and taking into cognisance community's view and aspiration, may be useful in dysfunctional customary land administration reform. Further research may be useful in this regard.

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APPENDICES

APPENDIX 1 ETHICS FORMS

EBE Faculty: Assessment of Ethics in Research Projects

Any person planning to undertake research in the Faculty of Engineering and the Built Environment at the University of Cape Town is required to complete this form before collecting or analysing data. When completed it should be submitted to the supervisor (where applicable) and from there to the Head of Department. If any of the questions below have been answered YES, and the applicant is NOT a fourth year student, the Head should forward this form for approval by the Faculty EIR committee: submit to Ms Zulpha Geyer (Zulpha.Geyer@uct.ac.za; Chem Eng Building, Ph 021 650 4791). Students must include a copy of the completed form with the thesis when it is submitted for examination.

This form must only be completed once the most recent revision EBE EIR Handbook has been read.

Name of Principal Researcher/Student: **Emmanuel Offei Akrofi** Department: **Geomatics**

If a Student: Degree: **Doctorial** Supervisor: **Ass. Prof. Jennifer Whittall**

If a Research Contract indicate source of funding/sponsorship:

Research Project Title: **Strengthening customary tenure for efficient urban land delivery in Ghana**

Overview of ethics issues in your research project:

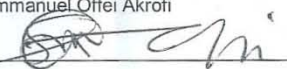
Question 1: Is there a possibility that your research could cause harm to a third party (i.e. a person not involved in your project)?		NO
Question 2: Is your research making use of human subjects as sources of data? If your answer is YES, please complete Addendum 2.	YES	
Question 3: Does your research involve the participation of or provision of services to communities? If your answer is YES, please complete Addendum 3.		NO
Question 4: If your research is sponsored, is there any potential for conflicts of interest? If your answer is YES, please complete Addendum 4.		NO

If you have answered YES to any of the above questions, please append a copy of your research proposal, as well as any interview schedules or questionnaires (Addendum 1) and please complete further addenda as appropriate.

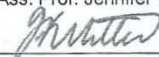


I hereby undertake to carry out my research in such a way that

- there is no apparent legal objection to the nature or the method of research; and
- the research will not compromise staff or students or the other responsibilities of the University;
- the stated objective will be achieved, and the findings will have a high degree of validity;
- limitations and alternative interpretations will be considered;
- the findings could be subject to peer review and publicly available; and
- I will comply with the conventions of copyright and avoid any practice that would constitute plagiarism.

Signed by:

	Full name and signature	Date
Principal Researcher/Student: AKREMM001	Emmanuel Offei Akrofi 	9 MAR 2012

This application is approved by:

Supervisor (if applicable):	Ass. Prof. Jennifer Whittall 	9 MAR 2012
HOD (or delegated nominee): Final authority for all assessments with NO to all questions and for all undergraduate research.	J.F. WHITTALL 	9 MAR 2012
Chair : Faculty EIR Committee For applicants other than undergraduate students who have answered YES to any of the above questions.		3/4/2012

APPLICATION HAS BEEN APPROVED
PROGRESSIVELY

APPENDIX 2: CLASSIFICATION OF FUNCTIONAL AND DYSFUNCTIONAL SYSTEMS (ACCRA – PATRILINEAL CASES)

	Maledjor	Teiman	Ogbojo	New Ningo	Afienya	Amrahia
Efficiency and Effectiveness						
Are procedures for land allocation clear, simple and working?	3	4	4	3	5	4
Are competent people used in the land delivery process?	3	3	5	4	5	3
Are customary laws applied in the land delivery process?	2	3	4	3	5	3
Are proper records kept on all land transactions?	1	2	2	2	3	4
Are statutory institutions and other professionals involved in the land delivery process?	3	3	4	4	5	3
Are the land rights of the poor and marginal groups (women, youth and peasant farmers) protected?	3	3	4	3	5	3
Are there mechanisms of protecting the rights of land developers?	1	3	4	3	5	1
Are land conflicts resolved timely, fairly and at reasonable cost?	1	4	4	4	5	1
Are there appeal mechanisms for conflict resolution?	1	4	4	4	5	1
Total	18	29	35	30	43	23
Accountability						
Are there mechanisms for questioning and explaining the on-going activities in the community?	1	4	4	3	3	2
Are land developers given any form of evidence of payment to cover their acquisition?	2	3	4	3	4	4
Are there proper financial accounting system?	2	2	2	2	2	3
Are the financial statements open for external auditing?	1	1	1	1	1	1
Total	6	10	11	9	10	10
Equity and fairness						
Is land distributed fairly among landowning community members?	2	4	5	3	5	3

Does the customary tenure system give uniform protection to indigenes and settlers?	3	4	5	4	5	3
Is land resource used appropriately to create wealth to benefit all community members?	3	3	3	3	3	1
Is land information equally accessible to all community members and the general public?	3	3	3	3	3	3
Are due compensations paid to all community members?	3	3	3	3	3	2
Are all sectors of the community fairly represented on the adjudication committees?	2	5	5	4	5	2
Total	16	22	24	20	24	14

	Maledjor	Teiman	Ogbojo	New Ningo	Afienea	Amrahia
Participation						
What is the level of involvement of community members in the land delivery processes?	2	3	3	3	3	2
Are community members involved in the choice and use of community resources?	1	4	4	3	3	1
How often do customary tenure institutions interact with community members?	2	4	4	3	4	3
What is the level of collaboration and coordination with statutory land agencies and the local government?	3	3	3	2	4	3
Total	8	14	14	11	14	9
Stable administration						
Is there violent fighting between traditional leaders?	2	5	5	4	5	2
Is there threat of destoolment?	3	4	5	4	5	3
Is there major insurgence or rebellion e.g. youth rising against traditional authorities on land issues?	1	3	4	3	5	2
Is there social unrest between indigenes and strangers?	4	5	4	4	5	3
Is there evidence of the ruling family being divided along factional lines?	3	5	5	5	5	3
Total	13	22	23	20	25	13
Price (cost)						
Do clients have to pay for the services of land professionals in the process of acquisition separately?	3	3	4	3	4	4
Are clients unable to select a land surveyor of their choice?	3	5	3	3	3	4
Are extra payments required from the client for the extraction of individual site plans?	2	2	4	3	4	4
Do clients pay to be shown their plots for the first time?	3	3	3	3	3	3

Do indigenes pay elders the same amount as strangers when acquiring land?	3	5	5	3	5	5
Total	14	18	19	15	19	20
Land disputes						
Are there boundary disputes with adjoining customary neighbours?	1	4	4	4	4	3
Boundary disputes among adjoining neighbours within the same customary area?	2	3	4	3	4	3
Are there demolishings as a result of disputes?	2	4	5	4	5	3
Is there evidence of multiple sales?	2	3	4	3	5	3
Do the youth feel cheated as a result of land distribution?	2	3	3	3	4	3
Total	9	17	20	17	22	15

APPENDIX 3: CLASSIFICATION OF FUNCTIONAL AND DYSFUNCTIONAL SYSTEMS (KUMASI – MATRILINEAL CASES)

	Mampong	Boadi	Sewua	Appeadu	Ekyem	Ejisu
Efficiency and Effectiveness						
Are procedures for land allocation clear, simple and working?	5	1	5	5	1	4
Are competent people used in the land delivery process?	5	2	4	5	2	4
Are customary laws applied in the land delivery process?	5	2	4	5	2	4

Are proper records kept on all land transactions?	5	1	3	4	1	4
Are statutory institutions and other professionals involved in the land delivery process?	5	2	3	4	1	3
Are the land rights of the poor and marginal groups (women, youth and peasant farmers) protected?	4	2	4	4	2	2
Are there mechanisms of protecting the rights of land developers?	4	1	4	5	1	3
Are land conflicts resolved timely, fairly and at reasonable cost?	5	1	4	5	1	3
Are there appeal mechanisms for conflict resolution?	4	1	4	4	1	3
Total	42	13	35	41	12	30

Accountability						
Are there mechanisms for questioning and explaining the on-going activities in the community?	4	1	4	4	1	3
Are land developers given any form of evidence of payment to cover their acquisition?	5	2	5	5	3	4
Are there proper financial accounting system?	4	1	4	4	1	4
Are the financial statements open for external auditing?	3	2	3	3	2	3
Total	16	6	16	16	7	14

Equity and fairness						
Is land distributed fairly among landowning community members?	4	2	4	4	2	3
Does the customary tenure system give uniform protection to indigenes and settlers?	4	1	4	4	1	2

Is land resource used appropriately to create wealth to benefit all community members?	5	1	5	5	1	3
Is land information equally accessible to all community members and the general public?	4	1	3	4	1	4
Are due compensations paid to all community members?	4	1	4	4	1	3
Are all sectors of the community fairly represented on the adjudication committees?	3	1	3	3	1	3
Total	24	7	23	24	7	18

University of Cape Town

Participation	Mampong	Boadi	Sewua	Appeadu	Ekyem	Ejisu
What is the level of involvement of community members in the land delivery processes?	3	2	3	3	1	3
Are community members involved in the choice and use of community resources?	4	1	3	5	1	3
How often do customary tenure institutions interact with community members?	4	1	4	4	2	3
What is the level of collaboration and coordination with statutory land agencies and the local government?	4	1	3	4	1	2
Total	15	5	13	16	5	11
Stable administration						
Is there violent fighting between traditional leaders?	4	1	4	4	1	3
Is there threat of destoolment?	4	1	4	4	1	4
Is there major insurgence or rebellion e.g. youth rising against traditional authorities on land issues?	4	1	4	4	3	4
Is there social unrest between indigenes and strangers?	4	4	4	4	4	4
Is there evidence of the ruling family being divided along factional lines?	4	1	4	4	3	4
Total	20	8	20	20	12	19
Price (cost)						
Do clients have to pay for the services of land professionals in the process of acquisition separately?	5	3	5	5	2	3
Are clients unable to select a land surveyor of their choice?	1	5	1	3	5	4
Are extra payments required from the client for the extraction of individual site plans?	5	3	5	5	2	3
Do clients pay to be shown their plots for the first time?	4	1	4	3	1	3
Do indigenes pay elders the same amount as strangers when acquiring land?	5	3	5	5	3	3

Total	20	15	20	21	13	16
Land disputes						
Are there boundary disputes with adjoining customary neighbours?	4	4	1	4	1	3
Boundary disputes with adjoining neighbours within the same customary area?	4	3	3	4	3	3
Are there demolishings as a result of disputes?	4	3	4	4	2	2
Presence of landguards?	5	5	5	5	3	4
Do the youth feel cheated as a result of land distribution?	4	3	5	5	2	3
Total	21	18	18	22	11	15

APPENDIX 4: INTERVIEWEES

Case study Area	Traditional Leaders	Indigene	Stranger	Land Professionals
ACCRA PATRILINEAL				
Maledjor	AM1, AM2	AM3, AM4	AM5	NIL
Teiman	AT1,AT2,Forum	AT4	AT5	NIL

Ogbojo	AO1, AO2, AO3	AO4	AO5	AOS
New Ningo	ANN1, ANN2	ANN3, ANN4	ANN5	NIL
Ablekuma-Afiencya	AAA1, AAA2	AAA3, AAA4	AAA5, AAA6	NIL
Amrahia	AA1, AA2	AA3	AA5	NIL
KUMASI (MATRILINEAL)				
Asokore Mampong	KAM1, KAM2	KAM3, KAM4	KAM5	KAMS
Boadi	KB1, KB2	KB3, KB4	KB5,KB6	NIL
Sewua	KS1, KS2	KS3,KS4	NIL	KSS1
Appeadu	KA1, KA2	KA3, KA4	KA5	NIL
Ekyem	KEk1, KEk2	KEk3	KEk5, KEk6	NIL
Ejisu	KE1,KE2	KE3, KE4	KE5	

Interviews with other land relevant agencies

Code	Organisation	Position
OASL1	Office of the Administrator of Stool Lands, Kumasi	Senior stools lands officer

KLTR1	Land Commission (Land Title Registration) , Kumasi	Registrar of Lands
KLTR2	Land Commission (Land Title Registration) , Kumasi	Senior Registration Officer
SMD1	Land Commission (Surveying and Mapping Division), Kumasi	Regional Director of Surveys
SMD2	Land Commission (Surveying and Mapping Division), Kumasi	Senior Lands Surveyor
KTCPD1	Town and Country Planning Department, Kumasi	Acting Director of Planning
KETCPD1	Town and Country Planning Department, Ejisu District, Ejisu	District Planning Officer
KALS1	Asantehene's Lands Secretariat, Kumasi	Liaison Officer
KALS2	Asantehene's Lands Secretariat, Kumasi	Lands Officer
KALS3	Asantehene's Lands Secretariat, Kumasi	A Traditional Leader

APPENDIX 5: SAMPLE QUESTIONNAIRES

SAMPLE QUESTIONS

Traditional leaders and elders

- How did your community come to live here?
- How do indigenes (men and women) acquire land for residential purposes?
- What about strangers? Since when did strangers start acquiring land here?
- Is customary tenure relevant in the face of rapid urbanization?
- What are the main impediments to customary land delivery in the face of urbanization?
- What can be done by the following agents to improve customary urban land delivery?
 - Chiefs and family heads
 - Indigenes
 - Planning authorities
 - Land surveyors
 - Land registration authorities
 - Government (Local and central)
- What criteria do you use to decide whom to sell land to?
- How can land be made available for the urban poor indigenes, despite the high pressure on land as a result of urbanization?
- Do you have approved layout for the area? How do you ensure that people abide by the approved design layout?
- How are land users affected by designed layouts compensated?
- Do you have specific land surveyors / land use planners working in your area?
- Who pays for their services?
- How do you keep record of who owns what and where? How are these records maintained?
- Do you have any local mechanism for land dispute resolution? How do you ensure that all members of the community have confidence in your local dispute resolution?

- What do you see as the advantages or disadvantages of urban expansion in your area?
- What are your fears about strangers moving into your area?
- How would you ensure that future generations (indigenes) have access to their ancestral land?
- How has been your experience with the following organisations in land administration?
 - The District Assembly
 - Assemblyman
 - Land Surveyors
 - Land Use planners
 - Office of the Administrator of Stool Lands
 - Other government organizations such as
- How can land be made available to majority of the urban population at a reasonable cost and free of litigation?

INDIGENOUS RESIDENTS

- How did you acquire your plot?
- How long is the process of acquiring a plot?
- Does gender affect one's plot size/location? If yes how?
- Did you make any payment?
- Do you have any official documentation pertaining to your land? If not why?
- What type of right do you have?
- How do you protect your boundaries?
- Have you or your family ever been involved in any land litigation? What happened?
- What is your opinion about "strangers" acquiring land in this area?
- What steps should be taken (by who?) to make the process of urban expansion more bearable to indigenes?
- How would you describe indigene /stranger relationship in this community?

STRANGERS (NON- INDIGENES)

- Why did you choose to acquire land here?
- Will you recommend this area to a friend/family in need of a plot? Why?
- Did you encounter any challenges with the indigenes in the process of acquiring a plot?
- How was the dispute resolved?
- How long did it take you to occupy the land?
- What type of right do you have in the land? How secure is your right?
- Did you obtain a building permit before building? If not, why?
- Have you registered your title? If not, why?
- Have you ever been involved in any land litigation?
- How did (will) you access water, electricity, access road and other services?

LAND (SPATIAL) PLANNING

- What criteria do you use in selecting areas for planning?
- How do you negotiate access to new planning areas?
- How do you ensure integrated plans among adjoining villages under different traditional leaders?
- What are the major challenges facing your department in carrying out its mandate? How do you resolve these?
- What roles, if any, do traditional leaders and land users play in the planning of an area?
- Who is responsible for the implementation and enforcement of the spatial plans?
- Are there any dispute resolution mechanisms in place for aggrieved persons or organizations to resort to when the need arises?
- Who pays for your services?
- How can land be made available for the poor?

LAND SURVEYING

- What makes land surveying expensive? How can it be made more affordable?
- How many surveyors work in this area? Do you belong to the same organization?
- What are the technical problems in surveying a layout on piecemeal basis?
- Do you have enough national controls within your area of operation?
- Do you have to establish control networks during the course of your work? How is it made available to other users?
- What are some of the major challenges you face in this area in carrying out your task?
- Do people forcibly remove corner pegs? If yes why?
- How do you prevent encroachment into adjoining areas?
- How long do you have to wait after submitting your survey report to receive the approved layout?
- What are the main causes of boundary disputes in this area?
- How can the surveyor assist in resolving boundary disputes?

ADMINISTRATOR OF STOOL LANDS

1. OASL is mandated to establish stool accounts and ensure that all incomes accruing to stools are paid into this account. How successful has OASL been in achieving this objective?.....
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2. What have been the major impediments in achieving this objective?
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3. Is OASL involved in dispute resolutions?.....
4. Who constitutes the adjudication committee?
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5. Does OASL have any edge over the courts in resolving land disputes?
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6. What types of disputes are resolved by OASL? Do you collaborate with other professionals?

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7. What are some of OASL's major achievements in resolving disputes in Accra/ Kumasi?

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University of Cape Town

APPENDIX 5: DECLARATION

Declaration

1. I know that plagiarism is wrong. Plagiarism is to use another's work and pretend that it is one's own.
2. I have used the APA Referencing convention for citation and referencing. Each contribution to, and quotation in, this essay/report/project/Project from the work(s) of other people has been attributed, and has been cited and referenced.
3. This essay/report/project/Project is my own work.
4. I have not allowed, and will not allow, anyone to copy my work with the intention of passing it off as his or her own work.
5. I acknowledge that copying someone else's assignment or essay, or part of it, is wrong, and declare that this is my own work.

Signature

